Algreco Sportswear Co. *and* International Ladies' Garment Workers' Union, Local No. 420, AFL-CIO. Cases 9-CA-16600, 9-CA-17248, 9-CA-17476-1, -2, 9-CA-17872, and 9-RC-13717

31 July 1984

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 30 December 1982 Administrative Law Judge Donald R. Holley issued the attached decision. The Respondent and the Charging Party filed exceptions and a supporting brief; the General Counsel filed cross-exceptions and a supporting brief; the Respondent filed answering briefs to the Charging Party's exceptions and the General Counsel's cross-exceptions, respectively; and the Charging Party filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions,[1] cross-exceptions, briefs, and answering briefs, and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] as modified herein and to adopt the recommended Order as also modified herein.[4]

The judge concluded, inter alia, that the Respondent violated Section 8(a)(3) and (1) of the Act by constructively discharging employee Faye Simmons. For the reasons stated below, we cannot agree with this conclusion.

The relevant facts are undisputed. In August 1981,[5] the Respondent decided to replace its single wage rate classification system with a three-tiered wage system. Prior to this time, the Respondent paid all its employees a base rate of $4.32 per hour, but increased this rate to $4.75 per hour if an employee worked a full 80 hours over a 2-week period. The new wage tiers implemented by the Respondent were $5.25, $5, and $4.75 per hour. The Respondent's plant manager, Ted Hatfield, its floorlady, Doris Poston, and the patternmaker, Joann Noel, evaluated each employee to determine which classification the employee would be placed in. The Respondent's sole owner, Alan Green, was also consulted in some instances.[6]

The Respondent put the new wage system into effect about 1 September. It was also about that date that the Respondent informed most of its employees of the new system and their placement therein. The only employees classified at the $4.75-per-hour rate were the Respondent's newest hires and six prounion employees. The judge found, and we agree, that these six employees—Verna Chumley, Florence Knight, Hope Ramey, Judy Ross, Mary Spencer, and Faye Simmons—were placed in the lowest classification because they were known union supporters, and that the Respondent thereby violated Section 8(a)(3) and (1) of the Act.

As noted above, Faye Simmons was one of the known union supporters.[7] Simmons started her em-

[1] We deny the Respondent's motion to strike the Union's exceptions and brief, in the Respondent's answering brief to those exceptions, as lacking in merit.

[2] The General Counsel, the Respondent, and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In sec. III,E,8 of his decision, the judge inadvertently omitted the name of Odeline Winters from the unit of employees laid off 3 December. He also inadvertently listed Massey's date of hire as "10/21/80"; the correct date is "10/21/68." The judge also found in this connection that Knight and Chumley were senior to all employees involved in the layoff except for Diana Massey. The record indicates that Chumley was also less senior than Emily Shone. These corrections do not warrant a different result on the merits.

[3] In his analysis of the discipline of Verna Chumley, the judge concluded that the General Counsel had made out a prima facie case of discrimination, and that the Respondent had not demonstrated it would have disciplined Chumley even if she had not engaged in protected concerted activity. However, the judge also stated, in dicta, that she would not have been disciplined "but for" her support of the Union. The Board abandoned the use of the phrase "but for" in *Wright Line*, 251 NLRB 1083 (1980), and we do not rely here on that analysis. We agree with the remainder of the judge's analysis that the Respondent violated the Act by disciplining Chumley.

Chairman Dotson and Member Dennis find it unnecessary to rely on *California Pacific Signs*, 233 NLRB 450 (1977), in reaching a decision in this proceeding.

[4] The judge recommended that a broad cease-and-desist order issue against the Respondent. However, we have considered this case in light of the standard set forth in *Hickmott Foods*, 242 NLRB 1357 (1979), and have concluded that the narrow cease-and-desist order is appropriate. We shall modify the judge's recommended Order accordingly.

Although the judge properly ordered the Respondent to remove from its records any reference to the discipline of discriminatees Sharon Nance, Stella Chapman, Verna Chumley, and Christie Shoemaker, he inadvertently failed to require the Respondent to notify the discriminatees in writing of the expungement, and that evidence of the unlawful discipline would not be used as a basis for future personnel actions. See *Sterling Sugars*, 261 NLRB 472 (1982). We shall modify the judge's recommended Order accordingly.

The judge concluded, and we agree, that the Respondent violated the Act by placing discriminatees Verna Chumley, Florence Knight, Hope Ramey, Judy Ross, Faye Simmons, and Mary Spencer in the lowest pay classification when it instituted its three-tier wage system approximately in September 1981. In his recommended remedy for these violations, the judge stated that the discriminatees should be paid at the highest classification rate. We conclude that the correct remedy is to order the Respondent to make the discriminatees whole by paying them what they would have been paid absent the discrimination against them. The remedy section of the judge's decision is modified accordingly.

[5] All dates are in 1981 unless otherwise indicated.

[6] Specifically, Green was consulted about five of six prounion employees whose evaluations were under consideration.

[7] Simmons was 1 of approximately 11 employees who had confronted owner Green 12 June concerning written disciplinary warnings given to

Continued

ployment with the Respondent in August 1974 and was a tabletop presser.[8] Simmons was not working 1 September when most employees were informed of their new wage classification. On 11 September Hatfield requested Simmons to come to his office. Hatfield told Simmons of the new wage structure and indicated that employees had been rated on their attitude, cooperation, and production. Hatfield then stated that Simmons was "at the bottom of the line when it comes to attitude." Hatfield explained that such an attitude would mean Simmons could not produce sufficient or quality work, and therefore she would be denied a raise. Hatfield identified Simmons' attitude "towards the Company and the plant" as the critical problem. Simmons responded by stating that she could not "work under these kinds of conditions. I can't work for less than a younger girl. I give you 100% of my capabilities every day I'm here . . . I'll have to quit."[9] Simmons quit the Respondent's employ that day.

The judge concluded that Simmons' quit was a constructive discharge which violated the Act. As detailed above, the judge first determined that Simmons was placed in the lowest pay classification for discriminatory reasons. The judge then noted that Simmons had been employed for approximately 7 years and had always received wage raises given other employees. He thus decided that the Respondent's placement of Simmons in the lowest pay category was "unpleasant and demeaning." Taking into account the Respondent's union animus, the judge further decided that the Respondent discriminated against Simmons with the "hope and expectation" that she would quit. Accordingly, he found that the Respondent violated Section 8(a)(3) and (1) of the Act by constructively discharging Simmons, but, as noted, we reverse that finding.

The Board has held that a constructive discharge occurs when an employee quits because an employer has deliberately made working conditions unbearable.[10] Two elements must be proven to establish a constructive discharge:[11]

> First, the burdens imposed upon the employee must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities.

In our opinion, the record does not demonstrate that the conditions imposed on Simmons were so intolerable as to force her to resign, or that the Respondent would reasonably have expected her to quit because of its placement of her at the low end of the wage scale.

The judge concluded that the Respondent's conduct toward Simmons was "unpleasant and demeaning." However, the proper standard of review requires not only that the change in working conditions be "difficult or unpleasant," but that the change be so "difficult and unpleasant" as to *force* resignation.[12] Although Simmons was unlawfully discriminated against, we do not find that the burden imposed by the Respondent on her was so intolerable as to force a resignation. The test is, of necessity, an objective one, taking into account the circumstances of each case.[13] The mere existence of discrimination is insufficient to warrant consideration of abandonment of employment as a constructive discharge.[14] If that were the case, then any discrimination violative of the Act followed by a quit by the discriminatee could be termed a constructive discharge. But our reading of the Act does not extend that far, and, considering the entire record, it is clear that Simmons' quit does not constitute a constructive discharge. We note that, prior to the new wage system, the Respondent paid its employees a maximum of $4.32 per hour. As an incentive for good attendance, however, the Respondent would pay an employee $4.75 per hour if the employee worked a full 80 hours in a 2-week period. Thus, under the old system, an employee could receive, at most, $4.75 per hour as wages. Under the Respondent's new system, the *minimum* wage rate was $4.75 per hour. It is plain that the Respondent, by this new plan: (1) raised accrued base wages for *all* employees and (2) guaranteed that no employee would receive *less* than the maximum attainable under the old system. In Simmons' case, the Respondent, at the very least, matched the maximum Simmons was capable of earning under the old wage rate system. While Simmons may have been discriminated against vis-a-vis other employees as to the wage rate she was placed in, this does not mean that her terms and conditions of employment became so unbearable that she was illegally forced to resign. Simmons herself was in no

employees Swann and Nance, and also concerning terms and conditions of employment at the Respondent's plant. Simmons also signed an authorization card, passed out union leaflets in the Respondent's parking lot, distributed authorization cards, and attended several union meetings.

[8] The Respondent is engaged in the manufacture of ladies sportswear.

[9] The judge also found that Simmons made reference to putting her work up against "a couple of niggers." Additionally, the judge discredited Simmons' testimony that Hatfield mentioned the Union during the conversation.

[10] *Keller Mfg. Co.*, 237 NLRB 712 (1978).

[11] *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976).

[12] *Crystal Princeton Refining*, supra.

[13] *Van Pelt Fire Trucks*, 238 NLRB 794 (1978).

[14] *Walker Electric Co.*, 142 NLRB 1214, 1215 (1963).

worse actual financial condition than before the changes in the system. Indeed, it could be said that she was in a better situation because the hourly wage of $4.75 that she was to receive no longer depended on her attendance. Accordingly, we conclude that the Respondent did not constructively discharge Simmons, and we shall dismiss this allegation of the complaint.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Algreco Sportswear Co., Huntington, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete the phrase "discharging employees or" from paragraph 1(f).

2. Substitute the following for paragraph 1(g).

"(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

3. Delete the name of Faye Simmons from paragraph 2(a).

4. Substitute the following for paragraph 2(d).

"(d) Remove from its records any reference to the discipline imposed on Sharon Nance 2 June 1981, Stella Chapman 15 June 1981, Verna Chumley 14 August 1981, and Christie Shoemaker 20 August 1981, and notify them in writing that this has been done and that evidence of these unlawful disciplines will not be used as a basis for future personnel actions against them."

5. Substitute the attached notice for Appendices A and B for that of the administrative law judge.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for International Ladies' Garment Workers' Union, Local No. 420, AFL-CIO, and that it is not the exclusive representative of hourly bargaining unit employees.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees concerning their union activities or sentiments.

WE WILL NOT close our plant temporarily or threaten permanent plant closure because our employees seek union representation.

WE WILL NOT threaten employees by informing them some employees may lose their jobs or that other unspecified reprisals may be experienced by them if they elect to have union representation.

WE WILL NOT discipline employees because they join or support International Ladies' Garment Workers' Union, Local No. 420, AFL-CIO, or any other labor organization.

WE WILL NOT refuse to accord proper pay classification to employees because they engage in union activities.

WE WILL NOT discourage membership in the above-named Union, or any other labor organization, by refusing to recall employees from an economic layoff because they engage in union activities or other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Sharon Nance, Stella Chapman, Gaynel Lloyd, Florence Knight, and Verna Chumley immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL make employees Verna Chumley, Florence Knight, Hope Ramey, Judy Ross, Faye Simmons, and Mary Spencer whole for the losses they sustained as a result of being assigned to our lowest pay classification by paying them the amounts they would have received had they been placed in the proper pay classification.

WE WILL make whole the employees listed below for the loss of earnings they sustained 19 and 20 March 1981:

Ardavidson, Barbara	Pinkerman, Janet
Bias, Delores	Ramey, Home
Black, Juanita	Ross, Judy
Chatfield, Elizabeth	Shoemaker, Christie
Chumley, Verna	Shone, Emily
Counts, Lois	Simmons, Faye
Davis, Sarah	Spencer, Mary
Field, Shelby	Stevens, Marilyn

Freeman, Virginia	Swann, Mary
Holton, May	Tooley, Donna
Knight, Florence	Trodgen, Geraldine
Lawhorn, Sandy	Vance, Faye
Lloyd, Gaynel	Walker, Garnett
Massey, Diane	Webb, Jerry
McCoy, Eldora	Williamson, Betty
Nance, Sharon	Wilson, Janie
Nelson, Joyce	

WE WILL remove from our records any reference to the discipline imposed on Sharon Nance, Stella Chapman, Verna Chumley, and Christie Shoemaker and WE WILL notify them in writing that this has been done and that evidence of their unlawful discipline will not be used as a basis for future personnel actions against them.

ALGRECO SPORTSWEAR CO.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. On charges filed by International Ladies' Garment Workers' Union, Local Union No. 420, AFL-CIO (the Union), complaints were issued by the Regional Director for Region 9 of the National Labor Relations Board (the Board) on May 6, 1981 (Case 9-CA-16600), September 30, 1981 (Cases 9-CA-16600 and 9-CA-17248), and November 10, 1981 (Cases 9-CA-16600, 9-CA-17248, and 9-CA-17476-1, -2). In each instance, such complaints alleged that Algreco Sportswear Co. (Respondent) had engaged in conduct which violated Section 8(a)(1) and (3) of the National Labor Relations Act. In answers which were timely filed, Respondent denied that it had engaged in the unfair labor practices alleged in the complaints.

The Union filed the petition in Case 9-RC-13717 on April 1, 1981. The election was held on May 29, 1981, pursuant to a Stipulation for Certification Upon Consent Election which was approved on May 1, 1981. Approximately 40 employees were eligible to vote and the tally of ballots reveals 13 votes were cast for the Union, 25 votes were cast against the Union, and there were no void or challenged ballots. On June 4, 1981, the Union filed timely objections which the Regional Director recommended be overruled in their entirety. On December 4, 1981, the Board issued its Decision and Order Remanding for Hearing, in which it concluded that Petitioner's Objections 5 and 6 raise substantial and material issues of fact which can best be resolved by a hearing. Accordingly, it ordered that the issues raised by such objections be consolidated with Case 9-CA-16600 for the purposes of hearing, ruling and decision by an administrative law judge.

On December 16, the Regional Director issued an order consolidating cases and notice of hearing consolidating Cases 9-CA-16600, 9-CA-17248, 9-CA-17476-1, -2, and 9-RC-13717. Thereafter, on January 15, 1982, the Union filed the charge in Case 9-CA-17872 and on January 22, 1982, it filed an additional charge docketed as Case 9-CA-17476-1. The Region issued an order consolidating cases, third consolidated amended complaint and order rescheduling hearing on February 3, 1982, and on February 17, 1982, it issued an order consolidating cases, fourth consolidated amended complaint and notice of hearing. Respondent filed timely answers to the complaints denying that it had violated Section 8(a)(1) and (3) of the Act as alleged in the complaints.[1]

The matter was heard in Huntington, West Virginia, on March 1-5 and March 8-9, 1982. All parties appeared and were afforded full opportunity to participate.[2] Subsequent to the close of the hearing, counsel for the General Counsel, counsel for the Union, and counsel for Respondent filed briefs which have been carefully considered.

On the entire record, including my observation of the witnesses when they gave testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a West Virginia corporation, is engaged in Huntington, West Virginia, in the manufacture of ladies' sportswear. During the 12-month period preceding the issuance of the February 17, 1982, complaint, it sold and shipped to customers located outside the State of West Virginia products, goods, and materials valued in excess of $50,000. It is admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES[3]

A. *Background*

For some 15 years, Respondent has engaged in the manufacture of women's sportswear in Huntington, West Virginia. Its products include pants, skirts, blazers, and shirts. Until mid-1981, its normal employee complement was 35-40 employees. The job classifications in the operation include: patternmaker, cutting room employees, shipping clerk, maintenance man, and machine operators.

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[1] Respondent interposed a motion to dismiss par. 6(c) of the fourth consolidated amended complaint at the outset of the hearing, contending that the allegation was barred by Sec. 10(b) of the Act; the motion is disposed of, infra.

[2] At the outset of the hearing, the General Counsel was permitted to amend the fourth amended complaint as follows: (1) to allege that the original charge in Case 9-CA-16600 was amended on April 29, 1981, and served on Respondent on the same date; (2) to amend pars. 6(i) by changing the name Judy Roth to Judy Ross; (3) to amend the reference to par. 6(f) in pars. 6(h)-6(g); (4) to add the names "Joyce Nelson and Emily Shone" to Appendix A; (5) to delete the name of Stella Chapman Ketchum from Appendix A; and (6) to allege that Respondent violated Sec. 8(a)(3) and (1) by warning and placing Sharon Nance on probation on June 20, 1981.

[3] All dates are in 1981 unless otherwise stated.

All of the machine operators are female. A retail outlet is operated on the premises.

At all times material herein, Respondent's employees have been directed by Alan Green, sole owner of the business; Ted Hatfield, plant manager; Doris Poston, floorlady; and Joann Noel, patternmaker.[4]

The record reveals that most of the alleged discriminatees in this case, all machine operators, have long been employed by Respondent. Thus, Florence Knight was hired in 1968; Verna Chumley was hired 11 years before the hearing; Mary Swann worked at Respondent continuously from December 15, 1975, until July 16, 1981; Faye Simmons was hired in 1974; and Mary Spencer has worked for Respondent for 8 years. Sharon Nance was employed for 5 years; Chris Shoemaker was employed for 5 years; Hope Ramey has worked for Respondent for 7 years; and Gaynel Lloyd worked for 2 years.

Prior to the latter half of calendar year 1980, Respondent's business was always profitable. Green testified that before he experienced financial difficulties the plant was operated on an informal basis. Very few personnel records were kept, Respondent had no formal rules and regulations that employees were expected to follow, and the work force remained relatively stable with few terminations or layoffs.

Unlike most garment manufacturers, Respondent has always paid its production employees an hourly wage, and uniform across-the-board raises were given to the sewing room employees in September of each year. Hatfield testified that uniform across-the-board raises were given in September 1980 and at that time, he and Green decided they should implement some type of an incentive wage structure when the next raises were due in September 1981.[5]

In February 1980, Ted Hatfield was promoted from a shipping room position to plant manager. At that time, Respondent's floorlady was Linda Dial. According to Hatfield, he was inexperienced when he was appointed plant manager and needed the assistance of Dial. On February 19, 1981, Dial was discharged by Green, allegedly because she indicated an unwillingness to cooperate with him and Hatfield.

On February 19, 1981, Doris Poston, then a machine operator with previous supervisory experience elsewhere, was made Respondent's floorlady. The following day, Hatfield met with Respondent's employees. He testified without contradiction that he then indicated to the employees that Joann Noel would be assisting Poston in her supervisory functions and he expected the employees to cooperate fully with both Noel and Poston. In addition, he testified he cautioned employees about spending too much time in the restroom, told them he did not want them wandering around the plant and staying away from their machines, and informed them that he knew some of them were deliberately slowing down production and causing problems by mixing up bundles.

The record reveals that Poston instituted several changes in the way work was performed in the sewing room once she became the floorlady. Prior to that time, the machine operators apparently arranged the goods they were working on in a manner which suited their personal preference and, once they completed their operations on a bundle of goods, they would personally take the bundle to the operator who was to perform the next operation on them. When Poston took over, she told the operators how to stack their goods and required them to remain at their machines while she personally took the goods from one operator to the next. Additionally, together with Noel, Poston sought on occasion to expedite the manufacturing process by instructing employees to sew or press items in a different manner.

B. *Overview of Events During Period of Alleged Violations*

In late February or early March, a union organizational drive was commenced at Respondent's plant. Green indicated during his testimony that he learned shortly after the campaign began that employees were being solicited to sign authorization cards at home and in the plant.

The regular starting time at Respondent is 7 a.m. On March 19, Green, contrary to his normal custom, entered the plant approximately 5 minutes after 7 a.m. He then observed four to five employees leaving the bathroom and concluded they had been meeting on his time. At approximately 9:30 a.m., he caused the employees to meet with him in the sewing room. During the meeting, which is described in greater detail, infra, Green informed the employees the Union was not going to tell him how to run his plant, and that he was laying them off the remainder of that week and the following so both he and they could decide what they were going to do.

During the weekend which followed the March 19 layoff, Respondent's employees were contacted and told to report for work Monday, March 23. Thereafter, by mailgrams dated April 2 and April 8, the Union informed Respondent that 10 of its sewing room employees were organizing for the Union (Delores Bias, Florence Knight, Gaynel Lloyd, Sharon Nance, Hope Ramey, Mary Swann, Judy Ross, Christie Shoemaker, Verna Chumley, and Stella Chapman Ketchum).[6] Before the described mailgrams were sent, Poston and Noel had learned Ramey's union sentiments during a telephone conversation, and Shoemaker had voluntarily informed Noel she favored union representation.

The Union filed its petition in Case 9-RC-13717 on April 1. On April 3, when it distributed paychecks to employees, Respondent gave each employee involved in the March 19-20 layoff low earnings slips in compliance with West Virginia law to permit them to apply for unemployment benefits. The remarks section of each slip

[4] Respondent admits, and I find, that at all times material Green, Hatfield, and Poston have been agents of Respondent and supervisors within the meaning of Sec. 2(11) and (13) of the Act. Noel's status is disputed.

[5] From September 1, 1980, to September 5, 1981, the wage scale for hourly production and maintenance employees was uniformly set at $4.32 per hour up to 64 hours and thereafter time and a half, or $6.48 per hour, for hours exceeding 64 hours if the employee actually worked 80 hours in a 2-week period. This figured to a biweekly gross pay of $380.16 and an average hourly rate of $4.75. However, if the employee actually worked less than 80 hours in a 2-week period, then the hourly rate of pay was a constant of $4.32.

[6] See G.C. Exhs. 6 and 7.

contained the notation: "Plant disciplinary layoff for not working during working hours." The forms were signed by Plant Manager Hatfield.

An election was held at the plant on May 29. As indicated, supra, the Union lost the election by a wide margin. It filed timely objections.

On June 12, Respondent distributed copies of a document entitled "Rules & Procedures Governing Discipline & Conduct" to each of its employees and posted a copy on its bulletin board in the plant. The document (placed in evidence as G.C. Exh. 2) provides in pertinent part:

> 2. Threatening, intimidating, abusing other employees or interfering with production by excessive talking is cause for disciplinary action, including termination of employment.
>
> 3. Chronic and excessive absenteeism is cause for disciplinary action and can lead to dismissal.
>
> . . . .
>
> 7. Wasting time, loitering or excessive trips to the rest room during working hours is subject to discipline including loss of employment.
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> 8. Deliberately restricting output or engaging in an illegal work stoppage is cause for immediate discharge.
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> . . . .
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> 10. Insubordination—refusal to do assigned work, the use of abusive or threatening language to Company officials will be cause for immediate suspension and discharge.
>
> . . . .
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> 12. An unsatisfactory quality of work, quantity of work or abnormal waste is cause for discipline including termination of employment.
>
> 13. Any conduct inconsistent with the highest standards of honesty and integrity or inconsistent with the best interests of the Company, customers or fellow employees can be cause for discipline and possible loss of employment.

After distributing and posting the above-described work rules on June 12, Plant Manager Hatfield called employees Swann and Nance to his office where he issued them written warnings and informed them they were being placed on probation. Thereafter, at quitting time on the same day, employees Swann, Nance, Bias, Chumley, Shoemaker, Knight, Spencer, Simmons, Ross, and Chapman met with Green. During the meeting which is described in greater detail, infra, Swann and Nance sought to ascertain why they had been disciplined and Green and the employees made disparaging comments to each other.

While Respondent normally closes its plant during the first 2 weeks of July so all employees can vacation, lack of work caused it to lay off most of its employees during the summer under discussion on June 19. Most of the employees were recalled to work on July 12 or 13. Employees Nance, Chapman, and Lloyd were not recalled after they were laid off on June 19.[7]

After the plant was reopened in mid-July, employee Chumley was issued a written warning and was placed on probation on August 14, and Shoemaker was given a written warning and was placed on probation on August 20.[8] Shoemaker quit shortly after she was disciplined on August 20.

On September 1, Respondent eliminated its single hourly wage scale and notified its employees during individual interviews conducted by Hatfield that it was instituting a three-tiered wage plan in which employees would receive $5.25 per hour, $5 per hour, or $4.75 per hour. All the prounion employees then employed by Respondent (Chumley, Knight, Ramey, Ross, and Simmons) were informed by Hatfield that they were being placed in the $4.75 per hour classification. Simmons quit when Hatfield informed her she would be in the lowest pay classification.

Economic conditions caused Respondent to lay off numerous employees in layoffs which occurred on December 3 and 10. While most of the employees who were involved in those layoffs were subsequently recalled, Knight and Chumley, who were laid off on December 3, had not been recalled at the time of the hearing held in this case.

C. *Contentions of the Parties*

The General Counsel contends that Respondent, through the acts and conduct of Green, Hatfield, Poston, and Noel, violated Section 8(a)(1) and (3) of the Act in numerous respects from March 19, 1981, to the date of the hearing. Summarized, the fourth amended consolidated complaint alleges that Respondent engaged in conduct violative of Section 8(a)(1) as follows: (1) Green, on March 19, informed employees he was closing the plant temporarily and may close it permanently because employees were seeking to be represented by the Union; (2) Green, on March 19, threatened employees with discharge and unspecified reprisals if they supported and selected the Union as their bargaining agent; (3) Noel and Poston interrogated employee Ramey regarding her union sentiments on March 20, and Noel then threatened Ramey by telling her employees would be out of work if they selected the Union as their bargaining agent; and (4) Hatfield told an employee (Simmons) that she was being denied a wage increase because she had signed a union authorization card. Additionally, the complaint alleges that Respondent violated Section 8(a)(3) and (1) of the Act by: (1) laying off the employees named in Appendix A to the complaint from March 20 to March 23; (2) by issuing written warnings to and placing on probation employees Swann, Nance, Chapman, Chumley, and Shoemaker; (3) by refusing to recall Nance, Chapman, and Lloyd from layoff after June 19, 1981; (4) by discharging Swann on July 16, 1981; (5) by denying wage increases on or about September 1, 1981, to Chumley, Knight, Ramey, Ross, Simmons, and Spencer; (6) by constructively discharging Shoemaker on August 20, 1981, and by constructively discharging Simmons on September 11,

[7] Stella Chapman Ketchum (hereinafter Chapman) was issued a written warning and was placed on probation on June 15. See G.C. Exh. 4–A.

[8] See G.C. Exhs. 4–B and 4–D.

1981; and (7) by failing to recall Knight and Chumley after they were laid off on December 3, 1981.

Respondent's defense is bottomed on a contention that the alleged discriminatees were all accorded favored treatment while Linda Dial was the floorlady and its claim that they sought to retaliate when Dial was fired and was replaced by Poston by intentionally seeking to disrupt production, by mislocating garments, slowing their production, by producing bad work, and by refusing to cooperate with supervision. It claims that the prounion employees ceased to associate with or work in harmony with antiunion employees during the preelection period, and that they persisted in such behavior after the election. Emphasizing the fact that the record fails to reveal that it engaged in unlawful conduct from the Union's filing of its petition until the election, Respondent claims the work-related conduct of the alleged discriminatees, rather than their support of the Union, caused it to take the adverse action against certain employees on and after June 12.

D. *The Alleged 8(a)(1) Violations*

1. The March 19 meeting

Green indicated during his testimony that he lives in an apartment over the plant and normally leaves his apartment for the plant considerably after the 7 a.m. starting time. On March 19 he entered the plant at approximately 7:05 a.m. and observed four to five unnamed machine operators coming out of the bathroom. As his employees were expected to be at their machines when a second bell was rung at 7 a.m. (the first bell having sounded 1 or 2 minutes before), he concluded the employees were meeting on his time.

At approximately 9:30 a.m. the same day, Green held a meeting with all employees in the cutting room of the plant. Unknown to Green, Sharon Nance, a sewing machine operator, made a tape recording of the comments made by Green during the meeting. After Nance identified the tape in question and authenticated it by indicating she stood next to Green while he spoke and accurately recorded all that he said, the tape was admitted in evidence over Respondent's objections as General Counsel's Exhibit 19. A transcription of the tape prepared by counsel for the General Counsel was subsequently received in evidence as General Counsel's Exhibit 20 after counsel for Respondent, together with Green and others, listened to the tape comparing it with the transcript, and counsel for Respondent thereafter agreed that the transcript is a substantially accurate transcription of the tape.[9] When called as an adverse witness by the General Counsel, Green admitted he made most of the comments which appear in the described transcript and, after the transcript had been received in evidence, he did not resume the witness stand to contend that the tape or the transcription of the tape failed to accurately reveal what he had said during the meeting in question. Accordingly, I find that the tape and the transcription constitute the best evidence of what was said. *East Belden Corp.*, 239 NLRB 776, 782 (1978); *Grede Foundries*, 205 NLRB 39, 47–48 (1973). Green's comments during the meeting as gleaned from his testimony and General Counsel's Exhibits 19 and 20 are summarized below.

After making several introductory remarks concerning how he started his business and his prior contacts with the Union, Green indicated the purpose of the meeting stating:

> So anyway I'm hearing these rumblings the last week or two . . . about 4 or 4 disgruntled around here. I don't know who. But what I can't understand if I worked in a place and I didn't like it, I'd have enough guts to quit. Go get yourself a job somewhere else.

He then explained that he owned the business, had made some investments, and did not need the business to eat. He thereafter stated:

> I just want you to know that. And so what I'm going to do; you can punch out, go home now and I'm going to let all you guys have all the meetings you want, get together, do whatever you want to do. But I am telling you I want you—the reason I'm having this meeting. I want everybody here to know exactly how I think and how I feel about it. Because this is my business. Nobody has got a dime in it. Nobody is going to come in here and tell me how to run my business. And if anybody here doesn't like the work here, I can't understand why they don't go somewhere else and get another job. That's what I did years ago because I was in business. I never thought I was going to get a bunch of trouble started and I'll do this and that and the other.

Thereafter, Green stated, "I can't believe this whole scene," and stated:

> I'm going to shut this place down right now all next week. That will give me time to think what I'm going to do and you all can consider what you want to do. And then I may call you back the next week. We can work 2–3 days a week if I want, we can do—whatever old Alan wants.

He then reiterated that he did not want anyone to tell him how to run his business and observed that he had done various things for his employees over the years and concluded, stating:

> I feel that I have been better than average employer. But I don't think I ought to have to put up with all of this. But I think I—I just want to tell you I'm not going to. So whoever has got this thing

[9] Counsel for Respondent indicated that the figure "9" appearing on p. 1 of the transcript should be "96." That change was made on the document at the hearing. My comparison of the tape and the transcript reveals that the last six lines of p. 4 of the transcript should be deleted and the following should be inserted: ". . . got to suffer with the guilty. I don't want to shut it down. Cause I can always (uh) take me 20 years to do it. I know people. I can sell goods all day long. That the easiest part of my business, is me hustling goods once we get it made. So anyway, that's all I got to say. And you can punch out and go home. I'll send your checks tomorrow."

going, or whatever they want to do, you go do what you want but I'll tell you this; I don't care what the Union or who. Anybody comes in here—I don't think anybody has the right to come in here and tell me how to run my business. And I have got the right to since I pay and I sign the checks to hire and fire whoever I want. But I know that I am not going to please everybody here and you all know that you're not going to please everybody but I just—I am fed up with the whole thing. I don't know what else I can, except that you all can leave out of here and know exactly how I feel and how I think. I am not going to run this business and have anybody come in here and tell me what to do. Now, if they want to slush some money in here, when I decide to go for that, they can do it. But they want to do something else. And so you all can decide what you want to do next week and then if I decide a week from Monday I'm going to call back and 2-3 of you show up all right. If you don't all right. But I am not so naive and dumb that over the years I've got several people here that have been with me quite a little while that I should have probably got rid of a long time ago. But I don't understand why they don't have enough nerve over the years if they didn't like it here to come—just don't even tell me nothing. Just quit and go somewhere else. And maybe you can go out there next week and find out how many jobs are out there. I don't know. I guess everybody here can get a job.

And the only thing I feel sorry about, like I say, is there are few here—I know I've got people here that do like me and do appreciate this place and I hate this. But you know the way the whole thing does. The innocent have got to suffer with the guilty. I don't want to shut it down. Cause I can always, uh, take me 20 years to do it. I know people I can sell goods all day long. That's the easiest part of my business, is me hustling goods once we get it made.

So anyway, that's all I've got to say. And you can punch out and go home. I'll send your checks tomorrow.

After Green completed his speech, his production employees clocked out and remained on layoff until they were recalled over the weekend and were told to report for work on Monday, March 23.

2. The March 20 actions of Poston and Noel

Employee Hope Ramey testified that Doris Poston telephoned her on March 20 and asked if she was for the Union. When Ramey answered in the affirmative, she contends Poston replied: "Well, now, Alan is not going to stand for that." Ramey indicated that Noel then got on the phone and asked her if she was for the Union. When Ramey said yes, Noel stated: "Hope, I just don't believe this." Ramey asserts she then informed Noel she had not been for the Union until Alan made the speech; that she then saw they needed a union. Noel then told her Alan was hurt and upset; that he only wanted "what was best for us." Ramey then asked if he wanted "what was best for us," why was he so against their union. According to Ramey, Noel then concluded the conversation by stating: "Well, Hope, I want you to think this over very strongly. There will be a—there may be a lot of people out of work if a union gets in."

While Poston and Noel both gave testimony at the hearing, neither controverted Ramey's testimony.

The record in this case reveals that, in addition to serving as Respondent's patternmaker, Joann Noel has considerable contact with Respondent's machine operators. She is reputed to be the most knowledgeable seamstress in the plant. After she prepares a pattern at Green's request, she then grades it in the different sizes and thereafter determines how the operators should sew the various parts of the garment together. While she has always given operators advice concerning the manner in which they should sew garments, the record reveals that since Poston was elevated to the position of floorlady the employees have been instructed to cooperate with Noel as well as Poston when either gave them directions in the sewing room. Noel indicated during her testimony that she interviews job applicants to determine their qualifications, and the record reveals that, at least since February 19, 1981, she has frequently observed the operators while they worked and that she has reported their deficiencies to Hatfield. When Swann, Nance, Chapman, Chumley, and Shoemaker were called to the office to be warned, Noel was the person who instructed them to report to the office. Hatfield indicated, during his testimony, that he relied on information received from Noel and Poston when he decided to reprimand the named employees. He further indicated that he consulted with both Noel and Poston when evaluating employees to determine what their wage classifications would be, and he indicated that he relied on input from both Noel and Poston to decide which employees would be laid off and recalled. Finally, Hatfield frequently stated during his testimony that Noel and Poston were his supervisors.

In my view, there can be no doubt that Joann Noel, who earns more than Poston, but less than Hatfield, is a supervisor within the meaning of Section 2(11) of the Act. I so find. I further find that the record justifies a conclusion that she acted as an agent of Respondent during all times material herein.[10]

3. The claim that Hatfield told Simmons she was denied an increase because she signed an authorization card

Simmons was not working on September 1 when Hatfield conversed with most of Respondent's employees concerning the wage classification they had been placed in. Several days after she returned to work, on September 11, Hatfield requested that she come to his office. When she arrived, he informed her that he, Joann, and Doris had reviewed the women's records and she may

[10] As Hatfield informed employees they were to cooperate with both Poston and Noel on February 19, 1981, I would find Respondent accountable for Noel's actions thereafter as it, by such action, placed her in a position wherein employees could reasonably believe she was acting in management's behalf. See *Hanover Concrete Co.*, 241 NLRB 936, 938-939 (1979); *Rexart Color & Chemical Co.*, 246 NLRB 240 (1979).

have heard they had three wage catagories—$4.75, $5.00, and $5.25; that they assigned women to classifications based on their attitude, cooperation, and production. Simmons testified Hatfield then told her: "You, Faye, are at the bottom of the line when it comes to attitude. With an attitude like you have, we don't feel that you can get out your best production or your best quality. Therefore we denied you a raise." Simmons then asked Hatfield to explain what he meant by attitude and she claims he replied: "Well, your attitude is not towards other employees. It is towards the Company and the plant." After the above interchange, Simmons indicated she stated: "Well, Ted, I cannot work under these kinds of conditions. I can't work for less than a younger girl. I give you 100% of my capabilities every day I'm here, and I would put my work up against any two girls you want to put up here that I'll get out my production and my quality . . . I'll have to quit." After Simmons had given the above account of her conversation with Hatfield on September 11, she was asked by counsel for the General Counsel if the Union had been mentioned in their conversation. She then stated that at some undescribed point in the conversation she asked: "Ted, why is this being said to me is because I signed the authorization card?" She claims Hatfield grinned and said, "It could be."

During his testimony, Hatfield failed to rebut most of Simmons' version of the September 11 conversation. He did, however, dispute two items. First, he contended that, when referring to how many persons Simmons claimed would be needed to replace her, she said he could "get a couple of niggers" to take her place. Second, he denied that the Union was mentioned in any respect during the conversation. When indicating that Simmons was denied a wage increase because of her attitude and because she was in the gang that gave Green the riot act on June 12, Hatfield added: "I mean its impossible for me to sit here and tell you that I'm going to put troublemakers in a higher class of workers." I credit Hatfield's assertion that Simmons made reference to "niggers" during the September 11 discussion, and I credit his assertion that nothing was said about the Union during the discussion.[11]

Analysis and Conclusions

1. The March 19 meeting

Summarized, paragraph 5(a) of the fourth amended complaint[12] alleges that Respondent, through Green's actions, violated Section 8(a)(1) on March 19 by: informing employees he was temporarily closing the plant because employees were seeking to be represented by the Union; threatening to close the plant permanently if employees selected the Union as their bargaining agent; threatening to discharge employees for supporting the Union; and threatening unspecified reprisals if the employees selected the Union as their bargaining representative.

While Green claimed during his testimony that he held the March 19 meeting and laid the employees off that day because some of them were meeting in the restroom on his time, the record fails to reveal that he indicated as much to the employees during the meeting. To the contrary, the message he imparted to employees on that date was that some of them were engaged in union activity and he was going to close the plant temporarily so both he and they could think about what they were going to do. In addition, by indicating during the meeting that no one was going to come in and tell him how to run his plant and by indicating to them that he did not need the business as he had made investments, he clearly inferred that he might close the plant permanently if the employees obtained union representation. By making the statements described, I find, as alleged, that Respondent, through Green's conduct, violated Section 8(a)(1) of the Act on March 19, 1981, by informing employees it was temporarily closing the plant because employees were seeking union representation and by threatening to permanently close the plant if the employees selected the Union as their bargaining representative.

In agreement with the General Counsel, I also find that, reviewing the totality of Green's remarks, Respondent's employees could have reasonably concluded that he was threatening them with unspecified reprisals if they elected to have union representation. Thus, by observing he had a number of older employees he should have gotten rid of long ago; that he decided who to hire and fire; and by indicating he may have them work 2-3 days a week—anything that "Ole Al" wanted—when he called them back, I find that the employees could have reasonably concluded that Green was threatening unspecified reprisals if they selected the Union as their bargaining agent. Such conduct violates Section 8(a)(1), and I so find.

While the General Counsel urges me to find that Green threatened to fire union adherents, the record reveals, instead, that he invited disgruntled employees to quit. I recommend that paragraph 5a(iii) of the complaint be dismissed.

2. The March 20 actions of Poston and Noel

Paragraph 5(b) of the complaint alleges that Poston unlawfully interrogated an employee concerning her union sympathies on March 20, 1981, and paragraph 5(c) alleges that Noel coercively interrogated an employee on the same date and that she threatened the employee by stating employees would be out of work if they selected the Union as their bargaining representative.

As noted, supra, employee Ramey's uncontradicted testimony reveals that both Poston and Noel asked her during their telephone conversation on March 20 if she was for the Union. Such conduct violates Section 8(a)(1) of the Act as alleged. Similarly, Noel's comment that "there may be a lot of people out of work if the union gets in" was a threatening comment which was obviously uttered to interfere with, restrain, and coerce Ramey in the exercise of her Section 7 rights and was thus violative of Section 8(a)(1) as alleged.

[11] Simmons' failure to include the alleged authorization card discussion in her original recitation of the conversation, her personal interest in the outcome of this case, and my belief that she did make the racist reference during the discussions causes me to credit Hatfield.

[12] Hereinafter called the complaint.

3. Hatfield's alleged statement to Simmons

Paragraph 5(d) of the complaint alleges that on September 11, 1981, Hatfield informed an employee she was being denied a wage increase because of her union support and activities. As I have refused to credit Faye Simmons' assertion that she asked Hatfield if he was refusing to give her a raise because she signed the authorization card, and her claim that he smiled and said "It could be," I refrain from finding the violation alleged and I recommend that the allegation be dismissed.

E. *The Alleged 8(a)(3) Violations*

The complaint alleges that Respondent sought after the May 29 election to punish the 13 employees who had voted in favor of union representation by inflicting discipline in the form of written warnings on some of them, by making conditions so intolerable for others that they were forced to quit, by placing in its lowest pay classification, all union adherents who remained in its employ on September 1, 1981, and by discharging outright or laying off and refusing to recall employees Swann, Nance, Chapman, Lloyd, Chumley, and Knight.

While admitting that it was fully aware of the identity of the employees who supported the Union, Respondent contended throughout the hearing that such employees became markedly antimanagement when Dial was fired and Poston was selected to take her place. Respondent contends that the so-called Dial favorites formed a clique at that time and they sought to interfere with the operation of the plant by intentionally limiting their production, hiding or mixing up bundles of garments, producing bad work, and generally refusing to cooperate with supervision. Respondent maintains the record reveals it refrained from attempting to correct the adverse situation which existed in the plant during the organization campaign on the advice of counsel, but it was compelled to take action during the summer of 1981 because the prounion employees took their loss in the election poorly and continued to snub their fellow workers and interfere with the operation of the plant.

Keeping in mind the contentions of the parties and the probative evidence offered to substantiate them, I analyze the above-described complaint allegations below.

1. The alleged discrimination against Mary Swann

Mary Swann was issued a written warning and was placed on probation on June 12 and she was thereafter discharged by Respondent on July 16.

The record reveals that Swann worked continuously for Respondent from December 15, 1975, until she was terminated on July 16, 1981. She was a sewing machine operator and worked primarily on collars.

During her testimony, Swann indicated that she acted as an employee organizer during the union campaign and attended an unstated number of union meetings. In addition, she claims she passed out union literature. Respondent does not dispute the fact that it knew Swann was a union adherent. Indeed, by its mailgram dated April 2, the Union notified Respondent that Swann was an organizer. The record fails to reflect, however, that Respondent was aware of Swann's attendance at union meetings or her literature distribution activities.

According to Swann, she, like other employees, had some bad work at times while she was employed by Respondent. She claims, however, that prior to June 12 she had never been reprimanded either orally or in writing because of her conduct or her work.

As indicated, supra, Swann was given a written warning on June 12 and was placed on so-called probation at that time. The record reveals that on the date in question Noel told Swann to report to Hatfield in the office. When Swann arrived, Hatfield, Green, and Noel were present in the office. Swann testified that, when she went into the office, Hatfield told her the reason he had brought her in was that it had been brought to his attention that she had bad work and a poor attitude and he was going to put her on probation. He handed her a written warning which was placed in evidence as General Counsel's Exhibit 4–E and asked her to read it and sign it. The document indicated in the "Warning" section that the nature of violation(s) was substandard work, conduct, and attitude. The "Company Remarks" section of the document read:

> This employee was warned about the following:
>
> 1. Bad work
> 2. Poor production
> 3. Harassing her supervisor (Doris Poston)
> 4. Excessive time in rest room (8 times in one day)

Swann testified Hatfield pointed to a bundle of ladies' jackets on his desk which had mandarin collars, indicating that was bad work. According to Swann, Hatfield did not indicate why her production was poor, how she had harassed Poston, or when she had spent excessive time in the restroom. Swann said nothing to Hatfield, other than indicating to him that she would not sign the warning. After Hatfield gave her the written warning, Green asked Swann if she knew what probation was. When Swann replied "yes," Green informed her he just wanted her to know what it meant because she had the poorest atitude of anyone in the plant.

After she had been warned on June 12, Swann discussed her situation with fellow employee Sharon Nance, who was also given a written warning that day. Swann and Nance thereafter discussed their situations with the other prounion employees—Delores Bias, Verna Chumley, Christie Shoemaker, Florence Knight, Hope Ramey, Mary Spencer, Faye Simmons, Judy Ross, and Stella Chapman Ketchum. At quitting time Swann, accompanied by the above-named female employees, asked Green if they could speak with him. Swann then told Green she would like to tell him why the bundle of jackets was in the office. Green cut her off, stating he knew about Greasy Ridge. Green then addressed Knight, stating he thought "we" were good friends; looked at Chapman and remarked he had taken her back several times; stated to Ramey that her absenteeism was the worst in the plant; and asked Shoemaker if she had anything to say. Shoemaker replied she was just there to observe. At

some point in the conversation, Nance told Green that she had never seen anyone led around by the nose like he was; that Joann Noel had the last say on who would be hired or fired. Green commented he would not believe anything any of them had to say because they had cost him a lot of money and had tried to ram the Union up his butt. Nance then asked, "Why don't you fire us," and Green said he was not going to fire them but they could quit; that he would not be as lucky as to have them all quit. Nance stated he did not have the guts to fire them. At the conclusion of the conversation, Green told Nance not to come back and Nance retorted she would be there the following day.

When asked if she had performed bad work on the bundle of jackets with mandarin collars which Hatfield pointed to in his office on June 12, Swann indicated that she worked on mandarin collars on the average of 1 day a week and that on May 4 she had experienced difficulty with one bundle of mandarin collars. According to Swann, she was to place an edge-stitch around the collar and for some reason she was unable to keep the stitch uniform. She claims she brought the problem to Poston's attention and Poston told her to send the several collars she had then completed on through the production process. According to Swann, she continued to sew the collars and later saw Noel discussing some collars with Hatfield. Noel then brought the collars back to her machine and, at this point, Poston told her to repair them. Swann testified she satisfactorily repaired the bundle of collars. She indicated that later in the day she saw Noel take a bundle of jackets with mandarin collars into the office.

During her testimony, Swann clarified what Green meant by telling her he knew about Greasy Ridge on June 12. Swann's explanation was that on May 2 she and former floorlady Linda Dial suspected that Noel was stealing Respondent's garments and having her brother who lived on Greasy Ridge sell them. On the day described, Swann and Dial went to Noel's brother's house to see if what they suspected was true. According to Swann, Noel learned they had visited her brother's house and Noel commented to her the next working day that she hoped she had found what she was looking for.

In addition to indicating she had alienated Noel in early May, Swann admitted during her testimony that, shortly before she was given her written warning, Poston had asked her to leave her sewing machine to do some ironing, a task she occasionally was asked to perform. While Swann was ironing, Poston had another operator work at Swann's sewing machine. At some point, and for an unexplained reason, Swann asked Poston why she had lied to her and informed her she should go to church. The next working day, Swann asked Poston if she had gone to church and Poston replied she had and "I prayed for both of us." Swann then informed Poston she would pray for herself.

At some point between June 12 and June 19, Swann was assigned the task of performing some sewing on the front of ladies' jackets. While accomplishing the assigned work, she noticed that the collars on the jackets, which she had previously sewn, did not look right. According to Swann, in similar previous situations she had corrected such errors, so she, without checking with her supervisor, Poston, started to correct the collars. When Poston observed what Swann was doing, she told her to cease repairing the collars as the repair looked worse than the original. Later in the day, Swann was told Green wanted to see her in the office. When she went to the office, Green asked her why she had taken it on herself to repair the collars on the jackets. Swann explained that she had done it because she did not feel Green would be satisfied with the collars and she did it to please him. Commenting that he frequently had difficulty with that type of collar, Green put his arm around Swann's shoulder, told her he was not mad at her, and asked if she would rework the garments. Swann left and complied with Green's request.

Swann was in layoff status from June 19 to July 13. When she worked on July 13, 14, 15, and 16, she claims Poston did not take her production count daily as she customarily did. At quitting time on July 16, Swann was told to report to the office. When she did, Hatfield informed her her attitude and work had not improved and he was terminating her.

In addition to adducing the above-described testimony to establish her claim that Swann was unlawfully disciplined and terminated, the General Counsel supports her contentions by observing that the record in this case reveals that subsequent to its adoption of written work rules on June 12: Respondent disciplined only known union adherents (Swann, Nance, Chapman, Shoemaker, and Chumley); it placed all known union adherents still in its employ in the lowest pay classification on or shortly after September 1 (Chumley, Knight, Ramey, Ross, Simmons, and Spencer); and it laid off and refrained from recalling five union adherents (Nance, Chapman, Lloyd, Knight, and Chumley).

Respondent defended its decision to discipline Swann on June 12 and its decision to discharge her on July 16 through the testimony of Poston, Noel, and Hatfield and employees Elizabeth Chatfield, Donna Tooley, Geraldine Trodgen, and Bill Maynard.

Poston testified that she experienced difficulty getting work out of Swann from the time she became the floorlady forward. She testified that during her first week as a supervisor she told Swann to quit talking to Knight at her machine. Thereafter, although Swann was supposedly experienced on collar work, Poston claims the employee followed her around the floor and repeatedly asked questions she should have known the answers to, such as, how to stack work, what size seams she should use, etc.[13] With respect to Swann's bad work on mandarin collars in early May, Poston claimed that Swann did not satisfactorily repair the collars as she had claimed and that employee Elizabeth Chatfield eventually had to redo the collars.[14] Poston recounted the exchange be-

[13] Poston claimed she concluded Swann was merely trying to beat in time and harass her by asking such questions repeatedly.

[14] Chatfield, seemingly a disinterested witness, corroborated Poston. I credit Chatfield's testimony as one of the collars reworked by Swann, which is obviously unsatisfactory, was placed in evidence as R. Exh. 6, and Chatfield was the more impressive witness.

tween herself and Swann during which Swann accused her of being a liar and claimed that in addition to failing to sew the mandarin collars properly and taking it on herself to patch the collars on jackets in June, Swann missed stitches on three to four bundles of collars at some unstated time in June.

During her testimony, Noel indicated that Swann was given "pie" or simple jobs such as making pockets, making collars, or topstitching collars while she worked under the supervision of her friend, Linda Dial. According to Noel, after Poston was made the floorlady, Swann exhibited an intention to refuse to cooperate with her and Poston by mislocating work, mixing up bundles, and putting out bad work. While Swann indicated she had only failed to edge-stitch one bundle of mandarin collars correctly in early May, Noel claimed Swann actually produced six bundles of improperly sewn collars on that occasion. Noel testified that, shortly after she learned that Swann and Dial had gone to her brother's house at Greasy Ridge, she observed that Swann went to the bathroom two times between breaks for 3 days in a row. She indicated she reported to Hatfield that Swann was going to the bathroom eight times a day.

Employees Chatfield, Tooley, Trodgen, and Maynard each gave testimony which was adverse to Swann. Chatfield, who was a machine operator when Poston was made floorlady, testified that, shortly after Poston was promoted, Swann told her that she was not going to cooperate with Poston and "they" were going to try to get rid of Ted (Hatfield) and Doris (Poston).[15] Tooley, also a machine operator, testified that she worked on garments after Swann completed her work and that, while Swann did good work before Dial was fired, Swann thereafter had bad work in the form of uneven stitching and crooked and wide seams. In addition, Tooley claimed that, when Swann reworked garments, she left long strings attached, which jammed her machine. Tooley indicated that, when Poston took work back to Swann, Swann and Delores Bias would laugh about it.[16] Trodgen, a machine operator who sewed buttons on garments after Swann edge-stitched the facings, testified that she observed that Swann produced bad work in April, May, and June. According to Trodgen, after Noel took the jackets with the defective mandarin collars to the office in May, Swann called her at home and told her, if she could not work in peace, that she would see to it that Joann would not work there either if it took the rest of her life. During the discussion, Swann told Trodgen she and Dial had gone to Noel's brother-in-law and had brought some garments Joann was stealing from Green and she had confronted Green with it.[17] Maynard testified that on unspecified occasions, after Poston became a supervisor, he observed that when Swann ran out of work she would just stand around. He claims that during the union campaign Swann told him she was not going to "bust her you-know-what for nothing."[18]

Hatfield testified he decided to discipline Swann and place her on probation on June 12 because Poston and Noel had described Swann's bad work to him; Poston had informed him that she felt Swann was just beating in time by asking her simple questions she should have known the answers to; he had learned that Swann had called Poston a liar; he had become aware of the fact that Swann had attempted to show that Noel was stealing garments from Green; and Noel had reported to him that Swann was going to the bathroom eight times a day. He claims he decided to discharge Swann on July 16 because she continued to put out bad work and he had personally observed her to go to the bathroom four times on the morning of July 16.

Analysis

Counsel, in their briefs, indicated that they were aware of their respective burdens of proof under the criteria set forth by the Board in *Wright Line*, 251 NLRB 1083 (1980). For the reasons set forth below, I find that the General Counsel satisfied her initial burden of making a prima facie showing sufficient to support an inference that Swann's participation in protected activity was a "motivating factor" in Respondent's decision to discipline and discharge her.

With respect to the discipline issue, the General Counsel established the following: (1) that Swann had worked for Respondent for approximately 5-1/2 years before she was disciplined on June 12, 1981; (2) that the employee was never reprimanded or disciplined before she became a known union adherent; (3) that only known union adherents were disciplined after Respondent adopted written work rules on June 12, 1981; (4) that Swann's conduct which led to the issuance of a written warning to her occurred substantially before the June 12 work rules were put into effect; and (5) that Respondent, through the actions and conduct of Green, Noel, and Poston, exhibited marked union animus when it learned its employees were seeking union representation. The above factors justify an inference that Swann was disciplined and placed on probation on June 12 because she was a known union adherent.

Turning to Respondent's defense, I find that it has adequately shown that Swann would have been disciplined even in the absence of her participation in protected activities. As noted above, Respondent adduced evidence which revealed: (1) that Swann and Dial were close friends and Swann informed her fellow employees before she became involved in union activity that she would not cooperate with Poston and would try to get rid of Poston and Hatfield; (2) that Swann antagonized Noel by attempting to show she was a thief and antagonized Poston just before she was reprimanded by calling her a

[15] The record fails to reveal that Chatfield relayed Swann's remarks to Respondent's supervision. Swann denied having such a conversation with Chatfield. Chatfield was the more impressive witness, and I credit her testimony fully.

[16] Swann denied that she laughed when Poston brought her rework. Tooley was the more impressive witness, and I credit her testimony.

[17] Swann denied having the described conversation with Trodgen. I credit Trodgen who, in addition to being a disinterested witness, was more impressive. The record fails to reveal that Trodgen advised Respondent's supervision of the conversation.

[18] Swann denied making the described remarks to Bill Maynard. Maynard was the more impressive witness, and I credit his testimony.

liar and by suggesting she go to church; (3) that both Noel and Poston reported Swann's work-related deficiencies to Hatfield after Swann had antagonized them; and (4) that Hatfield was fully aware that Swann had personally antagonized Noel and Poston.

In sum, the evidence offered by Respondent which relates to the discipline issue convinces me that Noel and Poston were motivated to inform Hatfield that Swann had a bad attitude, was producing bad work, and visited the bathroom too frequently, because of their personal hatred of Swann, which the employee invited, rather than because they desired to punish her for supporting the Union. Consequently, I recommend that paragraph 5(b) of the complaint be dismissed.

That evidence outlined above which reveals that treatment experienced by known union supporters after June 12, 1981, is sufficient to justify an inference that Swann's support of the Union was a motivating factor in Respondent's decision to terminate her. I conclude, however, that Respondent has shown that Swann would have been terminated even in the absence of her participation in protected activities.

The first factor which leads me to conclude that Swann would have been discharged even if she were not a known union advocate is the fact that Swann was the only known union supporter who was terminated outright by Respondent. All the rest were either laid off and never recalled, disciplined and placed on probation, or were denied wage increases in September 1981. Why then was Swann discharged since she was not shown to have been any more active during the union campaign than other employees? I am forced to conclude the answer is twofold: (1) Noel and Poston got on her "case" after she antagonized them; and (2) she was not a proficient employee and she ignored Hatfield's warning to cease spending excessive time in the restroom.

As previously noted, Noel did not voice any marked criticism of Swann's conduct of her work until the employee had attempted to show that Noel was a thief. Two days later, Noel rejected some of her work after Poston had said it was good enough to be sent through the production process. Similarly, Poston was not shown to have unduly criticized Swann until Swann accused her of lying immediately prior to the time that the employee was disciplined on June 12. Part of the supposed reason for the discipline was alleged harassment of Poston. In my view, it is clear that Noel and Poston found fault with Swann during May and June because she had antagonized them.

While the General Counsel contends that Swann did nothing which would warrant Hatfield's decision to discharge her after she was warned on June 12, Hatfield testified he observed Swann go to the bathroom four times during working time on July 16, and that, coupled with Noel's and Poston's indication that Swann's work had not improved, caused him to decide to terminate her. The record supports Hatfield's assertion that Swann's work did not improve after she was warned as she admittedly produced more bad collars between June 12 and 19 and thereafter sought to correct them when the jackets came back to her for another operation, and Hatfield's claim that Swann ignored the warning that she was not to spend excessive time in the restroom was not controverted as Swann failed to deny that she went to the bathroom four times the morning of July 16 as claimed.

In sum, for the reasons set forth above, I find that Respondent has shown that it would have terminated Swann on July 16, 1981, even if she had not been a known union adherent. Accordingly, I recommend that the allegation that she was terminated in violation of Section 8(a)(3) be dismissed.

2. Sharon Nance

Sharon Nance was employed by Respondent as a sewing machine operator for approximately 5 years before she was laid off on June 19, 1981. She indicated during her testimony that immediately prior to her layoff she sewed facings in buccaneers and tunics and closed the bottoms of the garments.

Nance indicated during her testimony that she attended a union meeting on March 12 and signed an authorization card at that time. By mailgram dated April 2, the Union notified Respondent that she was a union organizer. Later in the union campaign, Nance gave an authorization card to another employee and she attended several union meetings. The record fails to reveal that Respondent was aware that she engaged in such activities.

During her testimony, Nance indicated that she was never reprimanded concerning her conduct or work while she was supervised by Linda Dial. She admitted that at some unstated time after Poston was made floorlady she had been throwing bundles she had completed her work on in back of her so hard that they went under an adjoining machine. According to Nance, Poston asked her to refrain from throwing bundles behind her in that fashion and she complied with the request.

On June 11, the day before she was warned and placed on probation, Nance testified she conversed with fellow employee Norma Gibson. She claims she merely asked Gibson if she thought she would ever be called back by her former employer, Huntington Industries, and that Gibson replied she would not because that firm was going out of business. Nance further indicated that she observed Gibson talking to Poston shortly after she had talked to Gibson. She then saw Green walk up and observe all three individuals walk up to Noel's office. Later in the afternoon, Green approached Nance and told her "if we did not act like we had some sense, he was going to let us go." Nance replied "Allen, we are not dumb," and Green stated, "If you don't straighten up and act like you've got some sense, you are going to be let go."

On June 12, Nance was informed that Hatfield wanted to see her in his office. When she arrived, Hatfield handed her a written warning which was placed in the record as General Counsel's Exhibit 4–C. The "Nature of Violation "section of the document indicated she was being warned for substandard work, conduct, and attitude. The "Company Remarks" section read:

> This employee was warned about the following:
>
> 1. Bad work.
> 2. Harassing other employees.

3. Using abusive language to other employees.

The "Action to be Taken" portion of the document stated: "Put on probation. The next time any of these things are brought to my attention Sharon Nance will be terminated." After reading the document, Nance asked Hatfield, "What bad work?" He said "Front of jackets." She then asked him what abusive language and when, and he replied, "June 12 at noon." Nance then asked who she had harassed and Hatfield simply said other employees. Nance wrote on the "Employee Remarks Re: Violation" section of the document "All of this is a lie."

Nance denied during her testimony that she used abusive language during the lunch break on June 12. She claimed she spoke only with her sisters, Delores Bias and Judy Ross, during lunch on June 12. She indicated that approximately a week before she was warned on June 12, when asked by Poston to sew plackets on the front of jackets, Nance claims she told Poston she had never performed that function before, and Poston told her to go by the notches. According to Nance, the normal procedure followed when placing plackets on a jacket was to use notches or slits in the garments at the top and bottom as guides to assure that the plackets were placed on the front of the jackets in such a manner as to cause the top and bottom to be even with the edge of the garment. Nance indicated that she worked on some 15 bundles or approximately 90 jackets and since the notches, which Noel places on the material, were off, the plackets on about half the jackets were off by approximately one-fourth inch at the bottom. After Nance had completed all the jackets, the errors were detected and the jackets were returned to Nance for repair. Nance claims that when Poston returned the jackets to her she indicated she felt Poston was at fault for failing to show Nance how to sew them. Noel, who was also present, stated Nance was an old girl and should have known how to do it.

Nance's testimony concerning the meeting she, Swann, and the other prounion employees had with Green at quitting time on June 12 paralleled that summarized, supra.

On June 19, Nance was laid off as were a number of other employees. On June 26, she went to the plant to get her check and Poston informed her she would probably be calling her July 13 to come back on July 14. Nance was never called.

Respondent defended its decision to issue a written warning to Nance and place her on probation, and its subsequent refusal to recall her after she was laid off on June 19, 1981, through the testimony of Hatfield, Poston, and Noel and employees Bill Maynard and John Maynard.

Poston, Nance's immediate supervisor, testified that shortly after she was promoted to the floorlady position she orally reprimanded Nance when the employee was at another employee's work station talking. Poston claimed during her testimony that Nance's biggest fault was talking too much and she indicated that three employees—Geraldine Webb, Sandy Lawhon, and Donna Tooley—asked to be moved to machines away from Nance because Nance harassed them. According to Poston, when Nance completed her work on bundles of garments, she consistently threw them behind her so hard that they would go under a machine. At some unstated time, Poston told the employee not to throw bundles behind her hard enough to put them under the machine. With respect to bad work, Poston testified that shortly before Nance was warned on June 12, she was instructed to sew plackets on jackets, a job similar to closing the front of shirts, which Nance regularly performed. Poston indicated that, while she gave Nance initial instruction on how to sew the plackets, she did not follow up and Nance sewed approximately half of 14 bundles on wrong. The plackets were approximately one-fourth inch off on the bottom. According to Poston, she and Noel assisted Nance by ripping the incorrectly placed plackets off and some of the jackets were damaged in the process. Poston admitted that Nance accomplished the repairs satisfactorily. Poston testified she was informed by others that Nance "cussed out" a Mary Pinkerton in the restroom on or near June 12. Finally, she testified that, the day before she was warned, Nance had a conversation with employee Gibson which caused Gibson to become upset. According to Poston, Green subsequently orally warned Nance to leave new employees such as Gibson alone or he would terminate her.

Noel gave limited testimony concerning Nance. She testified that Nance was at fault when she sewed the plackets on the jackets improperly as she was an experienced operator and should have visually detected the error. Noel indicated that prior to the time Nance sewed the plackets on the jackets improperly, she had considered Nance to be a good operator.

Hatfield testified that Poston and Noel reported Nance's above-described conduct and bad work to him and their reports caused him to issue a written warning to Nance and place her on probation on June 12. Hatfield testified that Nance, Stella Chapman Ketchum, and Lloyd were not recalled after they were laid off on June 19 because Respondent did not need them.

Bill Maynard testified that Nance told him during the union campaign that she was not about to bust her "you-know-what" for nothing. He also indicated that, when the cutting room employees refused to join the Union, Nance, on occasion before the election, called the cutting room employees a "bunch of sucks." John Maynard, without indicating specific incidents, merely testified that Nance's work slowed down during the union campaign.

Analysis

As noted, supra, after adopting written work rules on June 12, Respondent disciplined only known prounion employees. Moreover, as also observed above, it placed all known union supporters still in its employ on September 1, 1981, in the lowest pay classification despite the fact that they were all senior employees. Such facts, considered in conjunction with the record evidence which reveals that Nance had worked for Respondent for 5 years without being reprimanded or warned for anything other than throwing bundles behind her forceably, and Noel's admission that she considered Nance to be a good sewing machine operator, cause me to conclude that an

inference that Nance was disciplined on June 12 because she was a known union adherent is warranted.

The evidence offered by Respondent to defend its decision to discipline Nance is not convincing. Thus, while Respondent claims that employees Webb, Tooley, and Lawhon asked to be moved away from Nance because Nance harassed them, Webb was not called to substantiate the claim and Lawhon and Tooley indicated that they felt Nance was harassing them because she repeatedly attempted to get them to join the Union.[19] Similarly, while Respondent claims Nance upset employee Gibson and "cussed out" employee Pinkerton, Nance testified she did not engage in such behavior and neither employee was called to refute her claim. Finally, although it is clear that Nance made a work-related error when she sewed plackets on jackets improperly, it appears that Noel, who was responsible for putting the notches on the material, was equally responsible for the error which she blamed entirely on Nance.

In sum, the record reveals that Respondent was apparently satisfied with Nance's performance until it commenced in June 1981 to take various forms of adverse action against the known union supporters in its plant. Moreover, it has failed, for the most part, to substantiate its claims that Nance engaged in objectionable behavior as it claims, and it failed to show that she, intentionally or through inadvertence, produced bad work immediately before she was disciplined on June 12. Accordingly, I conclude that Respondent has failed to rebut the General Counsel's prima facie showing that Nance was disciplined because she was a known union adherent. Accordingly, I find, as alleged, that by issuing a written warning to Nance on June 12, 1981, and by placing her on probation, Respondent violated Section 8(a)(3) and (1) of the Act.

By showing that: Nance was a competent operator who had been employed for 5 years; that she supported the Union and Respondent was aware of her sentiments; that Green, Poston, and Noel exhibited marked union animus; that Nance was unlawfully disciplined on June 12, 1981; and that Respondent from June 12 forward engaged in conduct which adversely affected all its known prounion employees, the General Counsel has adduced sufficient evidence to warrant an inference that Nance was refused recall after June 19, 1981, because she had supported the Union.

Respondent's stated reason for refusing to recall Nance after the June 19 layoff was simply that it did not need her. I note, however, that during Green's testimony the parties stipulated that the machine operators named below were hired by Respondent after May 29, 1981, on the dates indicated.

Norma Griffin	8/11/81
Carolyn Thompson	8/24
Genebell Cain	8/25
Odeline Winters	9/1
Eldora McCoy	11/3
Tootsie Cupp	11/19

[19] Hatfield admitted he said nothing to Nance when employees asked to be moved away from her.

Additionally, while the record reveals that most of Respondent's employees were laid off on June 19, 1981, only Nance, Ketchum, and Lloyd were not recalled when operations resumed on July 12 or 13. In the circumstances, I find that Respondent has failed to rebut the General Counsel's prima facie showing that Nance was refused recall for discriminatory reasons. I find, as alleged, that, by failing to recall Nance from layoff, Respondent violated Section 8(a)(3) and (1) of the Act as alleged.

3. The alleged discrimination against Chapman and Lloyd

Stella Chapman worked for Respondent on three different occasions.[20] She was last hired in April 1980 and worked until she was laid off on June 19, 1981. She was never recalled.

Chapman indicated during her testimony that she signed a union authorization card and gave the Union permission to inform Respondent that she was a union organizer. Her name was included on the April 8 mailgram sent to Respondent by the Union.

During her testimony, Chapman indicated that, on June 1, Green stopped her when she was on her way to the restroom and stated he wanted her to know he had taken her back several times. As noted, supra, Green made a similar comment to Chapman when she and the other prounion employees met with Green after work on June 12.

On June 15, Chapman was called to Hatfield's office where she was given an "Employee Warning Record" which was placed in evidence as General Counsel's Exhibit 4–A. The document indicates the nature of Chapman's alleged violations to be substandard work, carelessness, and attitude. The "Remarks" section of the document states:

> Putting out bad work
> Low production
> Bad attitude

Chapman refused to sign the warning statement given her by Hatfield. She testified that prior to June 15 she had never been warned about low production. She denied that she set pockets on vests improperly although she admitted Poston had told her some of her work on blazers was improper. Chapman candidly admitted she did not like Poston. She testified that Poston was always picking on her and indicated that Poston was hateful to her. She indicated she felt Poston intentionally assigned her to sew collars because Poston knew she was not good on collars.

By speed letter dated July 24, 1981, Respondent notified Chapman that, since she was then on indefinite layoff, her insurance coverage would be terminated as of August 1, 1981. Thereafter, the only correspondence she received from Respondent was in the form of low earn-

[20] Stella Chapman Ketchum was married after she was laid off on June 19. Her name was Stella Chapman while she was employed by Respondent, and she is to be referred to herein as Chapman.

ings slips which were mailed to her. She was never recalled.

Gaynel Lloyd worked for Respondent as a sewing machine operator for some 2 years before she was laid off.

The record reveals that the Union informed Respondent by mailgram dated April 2, 1981, that Lloyd was a member of its organizing committee.

Lloyd indicated during her testimony that while employed by Respondent she did not receive any complaints about her work and she was never disciplined. While Lloyd was in the group that met with Green after work on June 12, the record fails to reveal that Lloyd said anything at the time and it fails to reveal that Green addressed any remarks to her.

On June 19, Lloyd was laid off together with other employees. She then asked Poston when she could expect to be recalled and Poston told her she was not sure all of them would be called back; that Hatfield would call the ones he had work for. After operations resumed, Lloyd returned to the plant several times to pick up low earnings statements so she could collect unemployment. On the first visit she asked Hatfield about work and he told her there was not enough work and he might not call everyone back. He then told her he let one of her union buddies go. She asked who, and he said Mary Swann. Several weeks later, when she visited the plant, Hatfield told her he was not going to tell her she was fired, but if another job came along she should take it. He also told her she could continue to obtain low earnings slips and collect unemployment as long as she wanted.

On July 24, Respondent notified Lloyd by speed letter that, as she was indefinitely laid off, her insurance coverage would be terminated on August 1, 1981.[21]

Hatfield testified that he disciplined Chapman on June 15, because she had a bad attitude and her supervisors had reported to him that she had had bad work since she was rehired the last time. Hatfield indicated that Chapman and Lloyd were not recalled from layoff because they were not needed.

Poston indicated during her testimony that Chapman had been involved in an auto accident in February 1981, and had injured her wrist. She further indicated that, while Chapman was reputed to have been a good operator when previously employed, the employee showed her nothing during her most recent tenure of employment. According to Poston, she assigned Chapman to piece blazers and, when she had bad work, she assigned her to setting vest pockets. Poston claims the employee did the vest pockets so bad she took her off them and put her on collars. While on collars, Poston claims Chapman's repairs came to 50–55 percent of her production and that caused her to put Chapman on side closings. While engaged in side closings, Poston claims Chapman sewed a day or a day and a half with a loose stitch.

Respondent offered very little evidence to justify its failure to recall Lloyd after June 19. Poston merely testified that the quality of Lloyd's work was okay, but indicated she was slow.

[21] G.C. Exh. 9.

Analysis

Respondent contends that Section 10(b) of the Act should preclude a finding that it violated Section 8(a)(3) and (1) by disciplining Chapman on June 15, 1981. It argues that the original charge in Case 9-CA-17476, filed on September 28, 1981, did not specifically allege that it violated the Act by disciplining Stella Chapman and that it was improper for the Region to accept an amended charge on January 22, 1982, which alleged specifically that it violated the Act by disciplining Chapman. The original charge in the case under discussion alleged that Respondent had engaged in an unlawful course of conduct violating Section 8(a)(3) and (1) of the Act during the months of June, July, August, and September 1981 by, inter alia, failing to grant wage increases to named employees to discourage membership in and support for the Union; refusing to recall named employees from layoff for discriminatory reasons; unlawfully disciplining employee Verna Chumley; and constructively discharging certain named employees in order to discourage membership in and support for the Union.[22] Additionally, it contains a "catchall" 8(a)(1) allegation which states "By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act."

Section 10(b) of the Act provides that no complaint should issue based on any unfair labor practice occurring more than 6 months prior to the filing of a charge with the Board. This section, however, relates only to the actual filing of charges and, once a charge has been timely filed, the control over, and disposition of, that charge is vested exclusively with the General Counsel pursuant to Section 3(d) of the Act, who has the decision to act on the charge "as he deems fit." See *California Pacific Signs*, 233 NLRB 450 (1977).

In *Exber, Inc. v. NLRB*, 390 F.2d 127, 129–130 (9th Cir. 1968), the court set out guidelines not only for adding additional alleged discriminatees, but also for inclusion of violations not named in the charge:

> The holding of these decisons may be summarized thus: (1) A complaint, as distinguished from a charge, need not be filed and served within the six months. . . . (2) If a charge was filed and served within six months after the violations alleged in the charge, the complaint (or amended complaint), although filed after the six months, may allege violations not alleged in the charge if (a) they are closely related to the violations named in the charge, and (b) occurred within six months before the filing of the charge.

In essence, Respondent's claim in this case is that the Union was obligated to file a charge specifically alleging that Stella Chapman was unlawfuly disciplined within 6 months of the imposition of the discipline. The principles espoused in the above-cited cases reveal that Respondent's contention is without legal foundation. Here, the

[22] G.C. Exh. 1(n).

original charge attacked Respondent's course of conduct during a 4-month period and through it the Union specifically alleged that Respondent had disciplined one employee, Chumley, in violation of Section 8(a)(3) and (1) of the Act. Patently, the discipline of Chapman, which occurred during the same time period, is closely related to the violations alleged in the charge. In the circumstances, it is clear that the General Counsel could have included in any complaint issued in Case 9-CA-17476 an allegation that Respondent violated the Act by disciplining Stella Chapman on June 15, 1981.

In sum, with or without the filing of the amended charge in Case 9-CA-17476 on January 22, 1982, the General Counsel could have included in any complaint issued in Case 9-CA-17476 an allegation that Respondent disciplined Stella Chapman in violation of Section 8(a)(3) and (1) of the Act. In the circumstances, the January 22, 1982, amended charge merely related back to the original charge which was filed well within the time permitted by Section 10(b). Accordingly, for the reasons stated, I find the allegation that Stella Chapman was unlawfully disciplined on June 15, 1981, is properly before me for resolution.

Turning to consideration of the lawfulness of the discipline imposed on Chapman, the record reveals: (1) that Chapman was not reprimanded or disciplined during the 2-year period preceding June 15, 1981; (2) she was a known union adherent; (3) Respondent had exhibited considerable union animus prior to June 15 and Green had invited union activists to quit on several occasions; (4) that Chapman was disciplined the workday following her participation in the June 12 meeting with Green; and (5) the record reveals that only prounion employees were disciplined after June 12. The factors set forth cause me to conclude that the General Counsel has established, prima facie, that a motivating factor in Respondent's decision to discipline Chapman was her prounion sentiments.

As revealed, supra, Respondent sought to justify its decision to discipline Chapman through Poston's testimony which indicates that she was not a proficient employee. While I have no doubt that Chapman was a marginal employee as claimed after returning to work after a February automobile accident, I note that Poston failed to indicate during her testimony when Chapman produced the bad work she described. On the other hand, the timing of the discipline strongly suggests that Green decided after his June 12 meeting with Chapman and others to enforce Respondent's newly adopted work rules against the prounion employees to punish them for attempting "to ram the Union up his butt." In sum, I find that Respondent, while apparently ignoring the supposedly substandard work of Chapman for some time, has failed to prove that the employee would have been disciplined on June 15, 1981, even if she were not a known union supporter.

With respect to the refusal-to-recall issue, the record reveals: that both employees were known union supporters; that Green, Poston, and Noel exhibited marked union animus; that Hatfield indicated that he felt that the employees who met with Green on June 12 were a bunch of troublemakers; that Chapman was unlawfully disciplined on June 15; and that, from June 12 forward, Respondent engaged in conduct which adversely affected all its known supporters. Such factors cause me to infer that Respondent refused to recall Chapman and Lloyd after June 19 because they were known union supporters.

While Respondent claims that it did not recall Chapman and Lloyd because they were not needed, the record belies such contention as it reveals that Respondent hired six new sewing machine operators after June 19, 1981. In the circumstances, I find that Respondent has failed to rebut the General Counsel's prima facie showing that Chapman and Lloyd were refused recall for discriminatory reasons.

4. The Chumley discipline

Verna Chumley worked for Respondent as a sewing machine operator for 11 years before she was laid off on December 2, 1981.

During the organization campaign, the Union notified Respondent by mailgram dated April 8 that Chumley was a member of its organizing committee. While Chumley indicated that she passed out leaflets on one occasion during the campaign, the record fails to reveal that Respondent was aware she engaged in such activity.

On August 14, Chumley was informed by Noel that Hatfield wanted to see her in his office. Hatfield handed her the written warning placed in the record as General Counsel's Exhibit 4-B. The "Warning" section of the document indicates the nature of violation was attitude and not starting to work when bell rings. The "Company Remarks" section states:

> This employee was warned about the following:
>
> 1.Not starting to work when 7:00 AM bell rings. *3 times this week.*
>
> 2. Wasting time by spending time on the floor. Should be at machine.
>
> 3. Excessive talking.
>
> 4. Spending too much time in restroom.

The warning indicated Chumley was being placed on probation and would be terminated when warned again.

During her testimony, Chumley indicated she could not recall having failed to be at her machine when the 7 a.m. bell rang. While she admitted she talked to other employees when going to the bathroom, she denied that she visited the bathroom more than other employees.

Chumley's supervisors, Poston and Noel, testified that their main problem with Chumley was the fact that she spent too much time talking with other employees. Noel indicated that she told Chumley in February that she was talking too much. According to Noel, during a week in either June or July, she observed Chumley fail to start to work when the 7 a.m. bell rang on three occasions.[23]

[23] Noel testified Chumley was at a pencil sharpener one morning and was talking to other employees the other two mornings. I credit Noel's testimony as Chumley's denial was weak and unconvincing.

Poston indicated that, while the quantity and quality of Chumley's work were satisfactory, the employee had a habit of throwing her work under a machine and Chumley displayed a tendency to question Poston's instructions by going to others or suggesting that some other employee perform work assigned to her by Poston.

Analysis

In the Chumley situation, I have no doubt that Chumley failed to start work on time on three occasions during a workweek as claimed by Noel. Moreover, the record reveals that she probably spent more time talking to other employees during worktime than most of the other employees. However, by showing that Chumley had engaged in such conduct for 11 years before she was disciplined on August 14, and by showing that only known prounion employees were disciplined pursuant to the work rules placed in effect on June 12, the General Counsel has adduced sufficient evidence to justify an inference that Chumley, like her fellow prounion sewing machine operators, was disciplined because she was a known union supporter rather than for interfering with production.

Having accepted Respondent's claims that Chumley habitually spent time talking to other employees rather than working at her machine, I nevertheless conclude that Respondent failed to rebut the General Counsel's prima facie showing that the employee was disciplined because she was a known union adherent. Thus, the instant record reveals that, after Green invited the prounion employees to quit on June 12, practically all the prounion employees suffered adverse action of one type or another while the loyal company employees suffered no adverse action whatsoever. In point of fact, as discussed more fully infra, Chumley was, after being disciplined on August 14, to be later deprived of a wage increase on September 1 despite the fact that she was an 11-year employee who did acceptable work, and she was subsequently laid off on December 2 and not recalled thereafter. For the reasons stated, I conclude that Respondent was motivated by its aversion to Chumley's support of the Union to discipline her on August 14. Stated differently, I conclude that, but for the fact that she was a known union supporter, she would not have been disciplined.

5. The alleged discrimination against Christie Shoemaker

Christie Shoemaker worked continuously for Respondent from July 1973 until August 20, 1981. Except for a short period, she worked primarily on a machine which was used to put labels in garments and on a marrowing machine which sews a loop stitch on garments.

On August 20, while Shoemaker was marrowing shirt facings, Noel came to her work station and told her to alter the way she was performing the marrowing operation. The alteration required that Shoemaker reverse her procedure, cut strings which held the garment together differently, and prevented her from working with more than one bundle at a time. According to Shoemaker, Noel's suggested procedure slowed her down. In time, Shoemaker ran out of marrowing work and Poston assigned her to piecing jackets flats, a job she had not performed before. After completing some six bundles of jacket flats, Shoemaker returned to her marrow machine to work on blazers. In a short time, Poston came to her machine and, like Noel, told Shoemaker to alter her normal procedure for marrowing the blazers. At that point, Shoemaker asked Poston if she was doing anything right that day. Poston told her, "We could stand room for improvement." When she finished the blazers, Shoemaker asked Poston to put her on a new job. Poston then told the employee she would topstitch the jacket fronts she had previously pieced. As Shoemaker had not previously topstitched jackets, first Poston and then Noel demonstrated how it should be done. Shoemaker indicated that, after she had been shown how to do the topstitching, Noel instructed her to run her machine wide open. When Shoemaker protested, saying she did not think she was capable of topstitching with the machine wide open, Noel told her it was her machine and since she was an experienced operator she should be able to do it. Shoemaker completed her topstitching chore without further incident and moved back to her marrowing machine. A short time later, Noel came to her and informed her Hatfield wanted to see her in the office.

When Shoemaker reported to Hatfield's office as instructed, she was handed the Employee Warning Record placed in evidence as General Counsel's Exhibit 4–D. The document indicates the nature of her alleged violations were substandard work, attitude, disobedience, and slowing production. The "Remarks" section of the document states:

> Employee was warned about the following:
>
> 1. Bad attitude
> 2. Not doing as instructed by supervisor
> 3. Slowing up production
> 4. Does not cooperate with supervisor

The "Action to be Taken" section of the document stated "Employee placed on probation, and if violations continue or does not show improvement, she will be terminated. Refused copy of this warning."

Shoemaker indicated that after she had read the warning, she informed Hatfield, Noel, and Green that she could not understand how work slowdown could be in there because she had been out of work on her regular job for 2 days. At that point, Green stated she did admit she had a bad attitude, didn't she? In response, Shoemaker admitted her attitude had not always been the best and informed Green she had always given him 100 percent every day and had done the best she could for the Company. Green replied her best was not good enough. Shoemaker then turned to Noel and asked if she had ever been rude to her. Noel replied no and then added that Shoemaker did not act as if she liked it when Noel had changed her job that day. Noel continued by stating she had observed Shoemaker before that day and it had appeared to her that that day she had laid her work over nicely and neatly and slowly like she was doing it intentionally. As Shoemaker readied herself to leave, Green

told her he was going to make some changes in the plant and she should think about what had been said in the office that day.

After she was warned, Shoemaker returned to her machine and completed her work on the garments on the machine. She then clocked out and handed Noel and Hatfield her timecard, telling them she was sorry.

Analysis

The complaint alleges that Respondent violated Section 8(a)(3) and (1) of the Act by disciplining Shoemaker on August 20, by imposing on her more onerous working conditions and more closely monitoring her work, and by constructively discharging her on August 20.

While the General Counsel contends that Poston and Noel instructed Shoemaker to perform her work a new way on August 20 to make her job more onerous, the record reveals that Poston and Noel made numerous changes in the manufacturing process from February 19 forward to increase the efficiency of the operators. They both testified that they altered Shoemaker's work on August 20 in an attempt to improve her efficiency, and I credit their testimony. Having altered the way she was to handle her work, they thereafter observed her performance to ascertain whether the suggested alterations were accomplishing the desired result. In the circumstances, I find Respondent did not make Shoemaker's job more onerous and that the employee was not supervised more closely on August 20 for discriminatory reasons.

The General Counsel contends, and the record reflects, that Shoemaker was a knowledgeable employee who was highly regarded by supervision and her fellow employees. By showing that Shoemaker was a known union adherent; that Green, Poston, Noel, and Hatfield each exhibited marked union animus; and that Shoemaker was disciplined, as were other known union supporters, after the new work rules were put into effect on June 12; and that union supporters were subjected to several other forms of adverse treatment during the summer of 1981, I conclude the General Counsel has established prima facie that Shoemaker was warned and placed on probation on August 20 because she was a known union supporter.

Respondent defended its decision to discipline Shoemaker on August 20 by adducing testimony which was intended to show that Shoemaker had intentionally slowed her production during the organization campaign and through Noel's testimony that Shoemaker appeared to resent the changes made in the way she performed her work on August 20. Thus, employee witness Bill Maynard indicated during his testimony that he felt Shoemaker slowed down after Poston became the floorlady and Noel testified that Shoemaker slowed down in March. I accord little weight to such testimony as Shoemaker claimed she gave Respondent 100 percent all the time and, although it admittedly maintains production records, none were presented to show that Shoemaker's production dropped as contended by Respondent. Patently, it appears that Respondent had, at best, minimal cause for issuing a written warning to Shoemaker and placing her on probation on August 20. As noted, supra, the record strongly suggests that on June 12 Respondent decided to discipline any known union adherent who engaged in any conduct which did not meet with the full approval of Respondent's management. I find that Respondent has failed to show that it would have disciplined Shoemaker on August 20 even if she had not been known to be a union supporter.

Although I am convinced that Respondent harassed Shoemaker by disciplining her because of her prounion sentiments on August 20, I am not convinced that she was constructively discharged on that day. In *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976), the Board stated:

> There are two elements which must be proven to establish a "constructive discharge." First, the burdens imposed on the employees must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities.

I conclude that General Counsel has failed to satisfy either of the above-described elements in Shoemaker's situation. With respect to the impact of the changes in the manner in which Shoemaker was to perform her work on August 20, the first change merely reversed her procedure, allowed her to cut all the strings on the garment at one time rather than singly and, according to Shoemaker, only permitted her to work on one bundle at a time. Patently, these were not major changes which made Shoemaker's work markedly difficult or unpleasant. Similarly, while Shoemaker complained because Noel instructed her to run her machine wide open even though she was performing a job on it that she had not accomplished before, I note that Shoemaker did not indicate that she experienced any difficulty after operating the machine wide open as instructed.

With respect to the second element—that additional burdens were imposed because of the employee's union activities—I conclude, as indicated above, that Noel and Poston gave Shoemaker the instructions she received on August 20 because they were attempting to improve the efficiency of the manufacturing process rather than for the purpose of burdening Shoemaker because of her union activities.

For the reasons stated, I recommend that the allegation that Shoemaker was constructively discharged on August 20, 1981, be dismissed.

6. The alleged refusal to give known union adherents a pay raise

Hatfield testified that during the latter part of August he, Poston, Noel, and in some instances Green, evaluated Respondent's employees to determine which classification each employee would be placed in when Respondent instituted a three-tiered wage system on September 1.[24] The employees were rated very good, good, aver-

[24] Hatfield indicated Green was consulted about Chumley, Knight, Ramey, Spencer, and Simmons.

age, fair, or poor on quality of work, quantity of work, attitude, cooperation, and attendance. Those receiving the highest overall ratings were assigned to a $5.25-per-hour classification; those receiving good or average overall ratings were placed in a $5 per-hour classification; and those receiving the poorest overall ratings were placed in the $4.75-per-hour classification. Hatfield testified that, in determining the quality of each employee's work, supervision considered the kind of work done by employees and warning slips they had received. To determine quantity of work they considered how much employees produced, excluding rework. He indicated that attitude was determined by considering how the employees acted towards their supervisor, whether they went around with a chip on their shoulder, and whether they did as told but complained to other employees about their supervisors. He indicated cooperation was determined by considering whether the employee did what supervision wanted and had a good attitude about it. Finally, he indicated that total days of absence were considered to determine attendance.

Respondent placed the rating sheets for sewing room employees in the record as Respondent's Exhibits 3(a)-3(gg).

As the complaint alleges that Respondent violated Section 8(a)(3) and (1) of the Act by denying Verna Chumley, Florence Knight, Hope Ramey, Judy Ross, Faye Simmons, and Mary Spencer wage increases on September 1, 1981, the evaluations of those employees are discussed below. The parties stipulated that the employees named below, whose dates of hire are indicated, were placed in the classifications indicated on or about September 1, 1981.[25]

$5.25	*Date Hire*
Shelby Asbury	3-17-80
Diana Massie	10-21-68
Donna Tooley	9-8-80
Geraldine Trodgen	11-5-79
Faye Vance	3-4-74
Geraldine Webb	9-23-74
Betty Williamson	7-16-74
Janie Wilson	10-3-77
$5.00	*Date Hire*
Barbara Ardavidson	7-28-80
Lois Counts	7-26-71
Sara Davis	4-25-77
Sandra Lawhorn	7-28-80
Janet Pinkerman	9-24-70
Emily Shone	7-28-69
Marilyn Stevens	6-13-77
$4.75	*Date Hire*
Verna Chumley	2-15-71
Ernestine Farrell	5-16-81
Florence Knight	10-21-68
Sandra Lucas	4-28-81
Joyce Nelson	3-16-81
Hope Ramey	10-17-74
Judy Ross	7-16-74
Faye Simmons	8-21-74
Mary Spencer	3-4-74
Eldora McCoy	8-4-81

During direct examination, Respondent's counsel asked Hatfield to explain his reasons for placing certain employees in the lowest pay classification. Hatfield indicated that Ernestine Ferrell, Sandra Lucas, and Joyce Nelson were rated highly when evaluated but were placed in the lowest classification because they had not been with Respondent long.[26] Hatfield indicated that McCoy was on leave of absence when the employees were rated. He testified that McCoy was rated poor in attendance and was placed in the lowest classification for that reason. Hatfield testified that the quality and the quantity of Chumley's work were average, her cooperation was fair, her attendance was good, but her attitude was poor and left "something to be desired, and she was in the group that waylaid Mr. Green that day." Similarly, Hatfield stated he rated Faye Simmons as average on quality and quantity of work, good on attendance, but only fair on cooperation and poor on attitude. Hatfield indicated Simmons gave supervision a hard time and would finally do what she was told to do, but did not always do it right and complained about it. He indicated Simmons had been off for quite a long time with an operation and Green was good to her and in return she was in the group that clobbered him that day. He further stated:

> Well, I don't remember what day it was, a whole gang of them really gave him the riot act. I don't know how he ever put up with it. I believe if I would have been in his shoes I would have fired everyone of them on the spot.
>
> I mean it's impossible for me to sit here and tell you that I'm going to put troublemakers in a higher class of workers.

While Ramey was rated average on quantity and quality of work, and fair on cooperation, she was rated poor on attitude and attendance. Hatfield said Ramey was rated poor on attitude because she and Mary Spencer did not want any new people around them and harassed new employees who were put to work near them. He said Respondent always had a problem with Ramey on attendance.[27]

Hatfield testified that the main factor causing Mary Spencer to be in the lowest classification was her attitude, otherwise she was a good worker. Asked why he considered her attitude to be bad, he replied "her harassment of other employees . . . . Giving them a hard time during working hours. Trying to get them to sign up for the union and things like that . . . . Talking too much."

Hatfield testified that Judy Ross was put in the lowest category because she had a bad attitude. He indicated she tried to play one supervisor against the other by

[25] See G.C. Exh. 18 (classifications), and G.C. Exh. 21 (date of hire).

[26] Ferrell and Nelson were raised to $5 in November 1981, and Hatfield testified he considered giving Lucas a raise later but she quit because she had babysitter problems.

[27] Significantly, Hatfield testified he was not trying to say why she was not there—if she was not there, she was not doing him any good.

maybe asking Doris or Joann about the quality of some of the garments she was inspecting and they might tell her one thing and then if he happened to come by, she would ask him the same thing and see if he would give her a different evaluation on the garment. Additionally, he claimed she talked too much to her sisters (Nance and Bias).

Finally, Hatfield testified that Florence Knight's attitude caused her to be placed in the lowest classification. He indicated Poston and Donna Tooley had informed him that Knight did not want anyone to produce more than she did.[28]

Analysis

Excepting those employees who were not given a raise in September 1981, because they had not been employed very long by Respondent, the record in this case reveals: (1) that each of the alleged discriminatees named above were longtime employees of Respondent; (2) that none of the alleged discriminatees had previously been denied an annual raise; (3) that from June until September Respondent was engaged in an unlawful course of behavior as illustrated by its imposition of discipline on known union adherents only after adoption of work rules; (4) that Hatfield branded the alleged discriminatees as "troublemakers" because they engaged in protected concerted activity when meeting with Green on June 12; (5) that the so-called attitude of the alleged discriminatees was the main factor cited by Hatfield to justify his decision to deny them a raise; and (6) that the newer employees placed in the $4.75-per-hour wage classification were subsequently given raises or were considered for raises, while the alleged discriminatees uniformly remained at $4.75-per-hour. The factors set forth fully convince me, and I find, that the reasons given by Respondent for placing the alleged discriminatees in the lowest pay classification are pretextual and that Respondent concluded that each had a bad attitude because each was a known union adherent and had participated in the June 12 meeting with Green. Indeed, a conclusion that the employees in question were refused a raise for discriminatory reasons is bolstered significantly by the fact that Green was specifically consulted with respect to whether Chumley, Knight, Ramey, Spencer, and Simmons should receive a raise.

For the reasons stated, I find that Respondent placed Verna Chumley, Florence Knight, Hope Ramey, Judy Ross, Faye Simmons, and Mary Spencer in its lowest pay classification on or about September 1, 1981, because they were known union supporters.

7. The alleged constructive discharge of Faye Simmons

Faye Simmons was employed by Respondent from August 21, 1974, until September 11, 1981. She was a table-top presser and pressed various parts of garments before they were put together and, on occasion, pressed finished garments.

The record reveals that Simmons signed a union authorization card on March 31; that she passed out union leaflets in Respondent's parking lot; that she distributed authorization cards; and that she went to several union meetings.

Simmons was not working on September 1 when Hatfield conversed with most of Respondent's employees concerning the wage classification they had been placed in. Several days after she returned to work, on September 11, Hatfield requested that she come to his office. When she arrived, he informed her that he, Joann, and Doris had reviewed the women's records and she may have heard they had three categories—$4.75, $5, and $5.25; that they assigned women to classifications based on their attitude, cooperation, and production. Simmons testified Hatfield then told her: "You, Faye, are at the bottom of the line when it comes to attitude. With an attitude like you have, we don't feel that you can get out your best production or your best quality. Therefore we denied you a raise." Simmons then asked Hatfield to explain what he meant by attitude and she claims he replied: "Well, your attitude is not towards other employees. It is towards the Company and the plant." After the above interchange, Simmons indicated she stated: "Well, Ted, I cannot work under these kinds of conditions. I can't work for less than a younger girl. I give you 100% of my capabilities every day I'm here, and I would put my work up against any two girls you want to put here that I'll get out my production and my quality . . . I'll have to quit." After Simmons had given the above account of her conversation with Hatfield on September 11, she was asked by counsel for the General Counsel if the Union had been mentioned in their conversation. She then stated that, at some undescribed point in the conversation, she asked: "Ted, why is this being said to me is it because I signed the authorization card?" She claims Hatfield grinned and said, "It could be."[29]

Analysis

Having found that Simmons was denied a wage increase in September 1981 for discriminatory reasons, I review her situation to determine whether the General Counsel has shown that she was constructively discharged.

Prior to September 11, 1981, Simmons, an employee with an excess of 7 years' service with Respondent, had received the same wage received by other employees and each year she received a raise when across-the-board raises were conferred. On September 11, she was unlawfully denied a raise because she was a known union supporter, and she was placed in Respondent's lowest pay classification. I conclude that, by relegating her to that position, Respondent placed her in a position which was, in her view, most unpleasant and demeaning. Having found that Respondent denied Simmons and others a

[28] Poston testified Knight told her before she became a supervisor she could only produce a given amount correctly in a day. Tooley said Knight had a similar conversation with her when she was hired in September 1980.

[29] As indicated supra, I do not credit Simmon's assertion that Hatfield told the employee it could be that she was denied an increase because she had signed an authorization card.

wage increase because of her union sentiments, I infer it engaged in such conduct with the hope and expectation that Simmons and others would do what Green had encouraged them to do since the organization campaign began—quit.

For the reasons stated, I find that Respondent constructively discharged Faye Simmons on September 11, 1981.[30]

8. The alleged unlawful refusal to recall Florence Knight and Verna Chumley from layoff

In December 1981, Respondent experienced 2 layoffs. The General Counsel does not contest Respondent's assertion that the employees were laid off for economic reasons. Set forth below are the names of employees laid off, their dates of hire, the type of work they were performing when laid off, and the dates of their recall.'

Name	*Date Hired*	*Work*	*Recalled*
December 3 Layoff			
Florence Knight	10/21/68	Making Collars	Not
Verna Chumley	2/15/71	Making Collars	Not
Lois Counts	7/26/71	Making Collars	12/6/81
Norma Gibson	(?)	Setting Cuffs	Not
Carolyn Thompson	8/24/81	Making Cuffs	Not
Genebelee Cain	8/25/81	Making & Inspecting Cuffs	1/7/82*
Tootsie Cupp	11/19/81	(?)	3/5/82
Eldora McCoy	8/4/81	Hemming & Making Cuffs	3/1/82
December 10 Layoff			
Joyce Nelson	3/16/81	Setting Collars	1/4/82
Ernestine Ferrell	5/6/81	Fusing	1/4/82
Diane Pack	(?)	Shoulder-Joining	Not
Norma Griffith	8/11/81	Setting Pockets	1/16/82**
Sandra Lucas	4/28/81	Setting Sleeves	1/4/82
Barbara Arvidson	7/28/81	Inspecting	1/4/82
Christine Massey	10/21/80	Ironing	1/4/82
Sandra Lawhon	7/28/80	Topstitching & Making Collars	12/26/81
Emily Shone	7/28/69	Inspecting & Hemming	Not

* Quit on 2/24/82.
** Quit on 3/4/82.

While I have set forth the general types of work the above-named employees were performing at the time they were laid off, inspection of production records covering the period September 28, 1981, to December 1, 1981, which were placed in the record by Respondent as Respondent's Exhibits 2A–H, reveal that each of Respondent's sewing machine operators perform a great variety of work tasks during any given period. Thus, the exhibit under discussion reveals that, during the period described, Knight performed, inter alia, the following functions; set blazer collars, set blazer lapels, set shirts (collars), shoulder-joined, put lining on collars, inspected pants, inspected buccaneers, set lapels, made and turned collars, pieced fronts and backs of garments, worked on tulip collars. Similarly, the record reveals that Chumley was a versatile employee as she engaged, during the period described, in inter alia the following type of work tasks: edge-stitched mandarin facings, lined collars, made shirt collars, made buccaneer collars, turned collars, shoulder-joined, pieced fronts and backs of blazers, shoulder-joined blazers, sewed linings in buccaneers, side-closed garments, made cuffs, set blazer sleeves. It is clear, and I find, that the instant record reveals that both Knight and Chumley were widely experienced employees.

It is undisputed that Respondent was fully aware of the fact that both Knight and Chumley were union supporters. Their names were listed as organizers on mailgrams sent by the Union to Respondent on April 2 and April 8, respectively.

During her testimony, Knight indicated that several years ago John Long, Green's son-in-law, had informed her that in layoff and recall situations the Company attempted to follow seniority but was not obligated to.[31] In this respect, the record reveals that Knight had, prior to December 3, been employed by Respondent for approximately 13 years. She and Diana Massey were the most senior employees in the sewing room having both been hired on October 21, 1968. Chumley had been employed 11 years when she was laid off.

The General Counsel contends, and I agree, that she established, prima facie, that Knight and Chumley have been denied recall because of their union activities by showing: (1) That such employees were known union supporters; (2) that they were senior to all employees involved in the layoff save Diana Massey; (3) that 9 junior employees not shown to have been more widely experienced were recalled; and (4) that since June 12, 1981, Respondent repeatedly engaged in unlawful activity and conduct which was designed to punish employees for supporting the Union.

Respondent sought to show that Knight was not recalled because she had sought to cause various employees to limit their production and she had produced bad work. Additionally, it claims that Knight was not recalled because another employee, Joyce Nelson, is 2-1/2 times faster than Knight and was recalled to perform Knight's principal job—making and setting collars. With respect to Knight's alleged attempt to cause employees to limit their production, Poston testified that, when she was originally employed, Knight told her she could not do over 25–26 dozen collars a day and do good work. Similarly, employee Donna Tooley testified that, when she went to work at Respondent 1-1/2 years ago, Knight told her she did not want her to do more blazer collars than she did—not more than 5 dozen in 2 hours.[32] With

[30] See *S.E. Nichols Marcy Corp.*, 119 NLRB 75, 83; *Holiday Inn of Perrysburg, Ohio*, 243 NLRB 280, 286–287 (1979).

[31] The record reveals Respondent had experienced few layoffs of significance prior to 1981. Hatfield testified seniority was just one of the factors considered

[32] Knight denied that she told Tooley she should not set more than 5 dozen collars in two hours. The record reveals Knight kept careful records of her own production and exhibited an interest in the production of others. She appeared to be a straightforward witness, and I credit her assertion that she did not attempt to cause Tooley to engage in a work slowdown.

respect to poor production, Poston testified that Knight had a lot of repairs after she became the floorlady. She indicated that on one occasion Knight sewed lapels unevenly on two or three bundles of shirts and that later, around May, Knight altered her method of sewing certain lapels by failing to clip off the corners. According to Poston, when she asked Knight why she had failed to clip off the corners, Knight told her she thought she could produce more that way. Finally, Poston testified that, on one occasion when she assigned Knight to set collars on a marrowing machine, Knight butchered them. With respect to the claim that Nelson was recalled rather than Knight because she was more proficient, Poston testified that Nelson regularly sets several dozen more collars than Knight per day. In this respect, James Bounds, who testified he is a trained industrial engineer, claimed that at some unstated time he timed both Knight and Nelson while they were setting 12 like collars, and Nelson was 2-1/2 times faster.[33]

Respondent, through the testimony of Poston and Hatfield, defended Respondent's refusal to recall Chumley by claiming that it had reduced its work force to 20–23 employees by the time of the hearing and its sewing room employees must frequently change machines seven to eight times a day now. According to Poston, Chumley, who is 4 feet, 8 inches tall, likes to take a chair and tables which are adjusted for her height with her when she changes machines and Poston claims that her adjustment time with a machine change is about 10 minutes.[34]

Analysis

While Respondent's witnesses indicated during their testimony that Knight had performed some unacceptable work during calendar year 1981, and they indicated that Chumley was remiss at times as she had a tendency to talk to other employees too much, the instant record clearly reveals that these employees, with a combined total of 23 years' service, were, generally speaking, competent workers. Despite this, Respondent urges me to find that it lawfully failed to recall Knight after the December layoff because employee Nelson was able to perform the work previously performed by Knight, and do it faster, and it claims that it could not use Chumley because she would have been required to change jobs seven to eight times a day and it would suffer a loss of 70–80 minutes' working time a day because adjustments were necessitated due to Chumley's size when she changed machines. I reject the contentions for the reasons stated below.

With respect to Knight, Respondent claims, in effect, that it had no work for Knight after December 3 because Nelson, who was recalled, was able to make and set all the collars needed and she could do it more proficiently than Knight. To support its claim, Respondent: caused Poston to testify that Belinda Nelson could set several more dozen collars than Knight a day; caused Bounds to testify that he had timed both Knight and Nelson when they were setting 12 collars and Nelson was 2-1/2 times faster than Knight; and introduced its production records covering the period September 28 through December 1 to show that Nelson had greater daily production during that period than Knight. I accord little weight to Poston's partisan testimony as it is clear that she, Noel, and Hatfield were willing participants in the clear attempt by Respondent to punish the prounion employees for attempting to obtain union representation. Similarly, I attach very little weight to Bounds' testimony as he was unable to provide any details regarding the study he supposedly made and thus he gave what must be deemed to be opinion evidence.[35] Having concluded that Poston's testimony and Bounds' testimony are deserving of little weight, I have carefully reviewed the production records placed in evidence to ascertain whether they support Respondent's contentions. Such review reveals that Knight performed in excess of 12 operations on garment pieces during the period involved while Nelson, with exception of engaging in shoulder-joining during 1 week, worked during the entire period at the task of setting shirt, blazer, buccaneer, or tulip collars. As the work performed by Knight during the period was markedly more diverse than the work performed by Nelson, comparison of the overall efficiency of the two employees is impossible.

In sum, the instant record fails to reveal how much work which Knight was capable of performing was actually performed or who performed it subsequent to December 3, 1981. Moreover, after careful consideration of the evidence offered by Respondent, I am unwilling to find that Respondent has demonstrated that Nelson has been shown to be a more proficient employee than Knight. In short, I find that Respondent has failed to satisfy its burden of proving that Knight would not have been recalled after December 3 even if she had not been a known union supporter. I find that the employee was refused recall for discriminatory reasons as alleged in the complaint.

While Respondent offered some evidence in attempt to support its contention that it did not need Knight after December 3, it offered very little testimony or evidence to substantiate its claim that it could not use Chumley effectively after she was laid off. While Poston did, in fact, testify that the reduced size of the work force produced a situation after December 3, 1981, wherein operators were frequently required to change work tasks seven to eight times a day, no production records were offered to substantiate the claim. This, considered in conjunction with Chumley's claim that her size did not interfere with her ability to perform assigned work during her 11 years at Respondent, leaves me in a position wherein I cannot determine what work Chumley was capable of performing was actually performed subsequent to December 3, 1981. Moreover, without more detailed evidence which would indicate more precisely the number of moves

[33] Bounds kept no record of the study and could not indicate precisely when he conducted it or the time actually spent by either employee setting 12 collars.

[34] Although Chumley denied that her size interfered with her ability to perform her work, she did not deny that she liked to take her equipment from machine to machine.

[35] Acceptance of Bounds' testimony would prove little, if anything, as he timed Knight and Nelson only while they were performing an insignificant amount of work. To say the least, his supposed study was not very scientific.

made by the employee(s) who performed work which could have been performed by Chumley subsequent to her layoff, I am unable to conclude that Chumley's size would have presented a serious obstacle to utilization of this employee after the size of the work force was reduced. In the circumstances, I find that Respondent has failed to show that it would have failed to recall Chumley even if she had not been a known union adherent.

In sum, the instant record clearly reveals that Respondent sought from June 12 forward to rid itself of those employees who had attempted to obtain union representation by: imposing discipline on union supporters; constructively discharging Simmons; unlawfully refusing to recall Nance, Chapman, and Lloyd after layoff; and placing all union adherents in its lowest pay classification despite the fact that they were senior employees. I find that Respondent's refusal to recall Knight and Chumley after the December 3 layoff was but another act designed to punish employees for supporting the Union, and that by engaging in such conduct Respondent violated Section 8(a)(3) and (1) of the Act as alleged.

IV. THE REPRESENTATION CASE ISSUE

The objections to be considered in this case are:

> 5. Early in April, but within the critical period, the employer advised all employees that a prior layoff was disciplinary for having engaged in union activity, said prior layoff already being the subject of the complaint issued in number 9-CA-16600.
>
> 6. The layoff of employees on March 19, 1981 and the subsequent informing of the employees of the reason for the layoff was for exercising Union activity early in April, 1981 together constitute a single course of action designed to coerce and intimidate employees in the free exercise of their section 7 rights.

In support of the objections set forth above, the Union points to the low earnings slips issued by the Employer to employees on April 3, 1981, which stated, in relevant part: "Plant disciplinary layoff—for not working during working hours."

In its brief, the Union states its position as follows:

> By again informing the employees that their layoff on March 19 and 20 was a disciplinary layoff, in an effort to preclude them from drawing unemployment benefits, the Employer has once again made clear to the employees *during the critical period* that they can and will be disciplined for exercising Section 7 rights. There can hardly be a question that the layoff was in response to protected activity and designed to discourage it. By advising the employees as to the distribution of these low earning reports that the layoff was "disciplinary," the Employer, in a not so subtle way, again threatened the employees for engaging in protected activity. Accordingly, the March 19 speech, the March 19 and 20 layoff, and the April 3 distribution of the low earnings reports stating that the layoff was disciplinary, constitute a single course of action, running into the critical period, which had a coercive effect upon the employees and destroyed the laboratory conditions required for Board-conducted elections. *National Tape Corporation*, 187 NLRB 321 (1970).

In *Dresser Industries*,[36] and other cases, the Board has indicated that although "the rule in *Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1962), forbids specific reliance upon prepetition conduct as grounds for objecting to an election, such conduct may properly be considered insofar as it lends meaning and dimension to related postpetition conduct." Here, the sole issue is whether the instant Employer, by informing employees on March 19 that they were being laid off because they were seeking union representation, engaged in objectionable conduct when it informed them almost 2 weeks later that they had been laid off because they failed to work during working time. Contrary to the Union's contention, I find that the Employer's April 3 statement does not state or imply that the employees were laid off on March 19 because of their union activities. Accordingly, I recommend that Objections 5 and 6 be overruled, and that certification of the results of the election be issued.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
4. By engaging in the unlawful acts described in section III above, Respondent has engaged in, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.
5. Respondent has not violated the Act except to the extent specifically indicated in section III above.

THE REMEDY

Having found that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Respondent will be ordered to offer immediate and full reinstatement to their former positions of employment to Sharon Nance, Stella Chapman (Ketchum), Gaynel Lloyd, Faye Simmons, Florence Knight, and Verna Chumley, making such employees whole for any loss of earnings they suffered as a result of the discrimination practiced against them with backpay to be computed on a quarterly basis, making deductions for interim earnings, and with interest to be paid in accordance with the Board's decisions in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[37]

[36] 242 NLRB 74, 76 (1979).

[37] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

Having found that employees Verna Chumley, Florence Knight, Hope Ramey, Judy Ross, Faye Simmons, and Mary Spencer were placed in Respondent's lowest pay classification on September 1, 1981, for discriminatory reasons, I further find the record justifies a finding that such employees should have been placed in Respondent's highest pay classification at that time, and it will be ordered that Respondent make them whole by paying them the sums they would have received had they been properly classified on September 1, 1981. Having found that Sharon Nance, Stella Chapman, Verna Chumley, and Christie Shoemaker were unlawfully disciplined, I shall recommend that Respondent be ordered to expunge all reference to such disciplinary actions from its records. Finally, having found that the employees named in Appendix B [list incorporated in Board's Appendix] to this decision were laid off for discriminatory reasons on March 19 and 20, 1981, I shall order that they be made whole for the discrimination against them with interest to be paid in accordance with the decisions in *F. W. Woolworth Co.*, supra, and *Florida Steel Corp.*, supra.[38]

Because of the character of the unfair labor practices herein found, the recommended Order will provide that the Respondent cease and desist from in any other manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[39]

ORDER

The Respondent, Algreco Sportswear Co., Huntington, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union activities or sentiments.

(b) Closing its plant temporarily or threatening permanent plant closure because its employees seek union representation.

(c) Threatening employees by informing them some employees may lose their jobs or that other unspecified reprisals may be experienced by them if they elect to have union representation.

(d) Disciplining employees because they join or support International Ladies' Garment Workers' Union, Local No. 420, AFL-CIO, or any other labor organization.

(e) Refusing to accord proper pay classification to employees because they engage in union activities.

(f) Discouraging membership in the above-named Union, or any other labor organization, by discharging employees or refusing to recall them from economic layoffs because they engage in union activities or other protected concerted activity.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Offer Sharon Nance, Stella Chapman, Gaynel Lloyd, Faye Simmons, Florence Knight, and Verna Chumley immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and privileges, and make them whole for the discrimination practiced against them in the manner indicated in "The Remedy."

(b) Make employees Verna Chumley, Florence Knight, Hope Ramey, Judy Ross, Faye Simmons, and Mary Spencer whole for the losses they sustained as a result of being assigned to the lowest pay classification by paying them the amounts they would have received had they been placed in the highest pay classification on September 1, 1981.

(c) Make whole the employees listed in Appendix B [list incorporated Board's Appendix] to this decision for the loss of earnings they sustained on March 19 and 20, 1981.

(d) Expunge from its records any reference to the discipline imposed on Sharon Nance on June 12, 1981, Stella Chapman on June 15, 1981, Verna Chumley on August 14, 1981, and Christie Shoemaker on August 20, 1981.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Huntington, West Virginia facility copies of the attached notice marked "Appendix A."[40] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[38] The record reveals only sewing room employees who received low earnings statements which were placed in the record as G.C. Exhs. 14A-Q were involved in the March 19-20 layoff. The male employees named in Appendix A to the complaint were not involved in the layoff.

[39] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[40] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."